

I. EXECUTIVE ORDERS
 BJ 13-05 Establishment of the Louisiana Interagency Council on Homelessness through the Housing and Transportation Planning and Coordinating Commission..... 933

II. EMERGENCY RULES
Children and Family Services
 Economic Stability Section—Child Welfare Emergency Assistance Services Program (LAC 67:III.5597)..... 934

Education
 Student Financial Assistance Commission, Office of Student Financial Assistance—Scholarship/Grant Programs (LAC 28:IV.Chapter 12)..... 934
 Tuition Trust Authority, Office of Student Financial Assistance—START Savings Program (LAC 28:VI.311 and 315) 938

Health and Hospitals
 Bureau of Health Services Financing—Behavioral Health Services—Physician Payment Methodology (LAC 50:XXXIII.Chapter 17)..... 939
 Behavioral Health Services—Statewide Management Organization—LaCHIP Affordable Plan Benefits Administration (LAC 50:XXXIII.103) 940
 Coordinated Care Network—LACHIP Affordable Plan Benefits Administration (LAC 50:I.3103)..... 941
 Coordinated Care Network—Physician Services—Reimbursement Methodology (LAC 50:I.3307 and 3509)..... 941
 Coordinated Care Network—Repeal of Dental Benefits Plan (LAC 50:I.Chapter 29) 942
 Crisis Receiving Centers—Licensing Standards (LAC 48:I.Chapters 53 and 54)..... 943
 Disproportionate Share Hospital Payments—Low Income and Needy Care Collaboration (LAC 50:V.2503 and 2713)..... 966
 Disproportionate Share Hospital Payments—Small Rural Hospitals—Qualifying Criteria (LAC 50:V.2705)..... 968
 Early and Periodic Screening, Diagnosis and Treatment—Repeal of Dental Services Removal (LAC 50:XV.6515 and Chapter 69) 969
 Federally-Qualified Health Centers—Fluoride Varnish Applications (LAC 50:XI.10301 and 10701)..... 969
 Home and Community-Based Services Waivers—Children’s Choice—Allocation of Waiver Opportunities (LAC 50:XXI.11107)..... 970
 Home and Community-Based Services Waivers—Residential Options Waiver (LAC 50:XXI.Chapters 161-169)..... 971
 Inpatient Hospital Services—Non-Rural, Non-State Hospitals—Low Income and Needy Care Collaboration (LAC 50:V.953)..... 986
 Inpatient Hospital Services—Public-Private Partnerships—Reimbursement Methodology (LAC 50:V.1703).... 987
 Inpatient Hospital Services—Public-Private Partnerships—Reimbursement Methodology (LAC 50:V.1703).... 988
 Medicaid Eligibility—Medically Needy Program—Behavioral Health Services (LAC 50:III.2313)..... 989
 Medical Transportation Program—Emergency Ambulance Services—Supplemental Payments (LAC 50:XXVII.327 and 355)..... 991
 Nursing Facilities—Reimbursement Rate Reduction (LAC 50:II.20005)..... 993
 Nursing Facilities—Reimbursement Rate Reduction (LAC 50:II.20005)..... 994
 Outpatient Hospital Services—Public-Private Partnerships—Reimbursement Methodology (LAC 50:V.6703)..... 995
 Pharmacy Benefits Management Program—Medication Administration—Influenza Vaccinations (LAC 50:XXIX.123, 991, and 993) 996
 Professional Services Program—Fluoride Varnish Applications (LAC 50:IX.901-905 and 15105) 996
 Rural Health Clinics—Fluoride Varnish Applications (LAC 50:XI.16301 and 16701)..... 997
 State Children’s Health Insurance Program—LaCHIP Affordable Plan Benefits Administration (LAC 50:III.20501, 20505 and 20507)..... 998

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Office for Citizens with Developmental Disabilities—Home and Community-Based Services Waivers Children’s Choice—Allocation of Waiver Opportunities (LAC 50:XXI.11107).....	970
Home and Community-Based Services Waivers—Residential Options Waiver (LAC 50:XXI.Chapters 161-169).....	971
Office of Behavioral Health—Behavioral Health Services—Physician Payment Methodology (LAC 50:XXXIII.Chapter 17).....	939
Behavioral Health Services—Statewide Management Organization—LaCHIP Affordable Plan Benefits Administration (LAC 50:XXXIII.103)	940
Office of Public Health—Review and Approval of Plans and Specifications for Issuance of a Permit for a Potable Water Supply (LAC 51:XII.105).....	999
Public Safety and Corrections	
Uniform Construction Code Council—Uniform Construction Code (LAC 55:VI.301).....	1000
State	
Elections Division—Voter Registration at Mandatory Voter Registration Agencies (LAC 31:II.Chapter 4).....	1002
Wildlife and Fisheries	
Wildlife and Fisheries Commission—Oyster Season Opening in a Portion of the Public Oyster Seed Grounds East of the Mississippi River	1005
III. RULES	
Children and Family Services	
Division of Programs, Licensing Section—Juvenile Detention Facilities Fees, Fines, Penalties, and State Central Registry Disclosure (LAC 67:V.Chapter 75).....	1006
Economic Development	
Office of Business Development, Office of Entertainment Industry Development—Entertainment Industry Tax Credit Programs—Digital Media and Software Act (LAC 61:I.1661-1673)	1009
Musical and Theatrical Production Income Tax Credit Program (LAC 61:I.1690-1697)	1015
Education	
Board of Elementary and Secondary Education—Bulletin 118—Statewide Assessment Standards and Practices (LAC 28:CXI.305, 701, and 1817)	1018
Bulletin 126—Charter Schools (LAC 28:CXXXIX.2709 and 2711)	1021
Bulletin 129—The Recovery School District (LAC 28:CXLV.505).....	1022
Bulletin 134—Tuition Donation Rebate Program (LAC 28:CLV.Chapters 1-13)	1023
Bulletin 135—Health and Safety (LAC 28:CLVII.Chapters 1 and 3).....	1029
Bulletin 741—Louisiana Handbook for School Administrators—High Schools (LAC 28:CXV.2317).....	1038
Environmental Quality	
Office of the Secretary, Legal Division—Incorporation by Reference of 40 CFR 60 (LAC 33:III.3003)(AQ339ft)	1038
Regulatory Permit for Flaring of Materials Other than Natural Gas (LAC 33:III.319)(AQ322)	1039
Governor	
Board of Examiners of Certified Shorthand Reporters—Continuing Education (LAC 46:XXI.603 and 607)	1040
Commission on Law Enforcement and Administration of Criminal Justice—Innocence Compensation Fund (LAC 22:III.Chapters 81-87).....	1041
Crime Victims Reparations Board—Limits on Awards (LAC 22:XIII.503)	1042
Health and Hospitals	
Board of Examiners for Speech-Language Pathology and Audiology—General Requirements (LAC 46:LXXV.107, 109, 121, 123, 125, 130, and 701)	1042
Board of Examiners of Nursing Facility Administrators—Exam Requirements and Complaints (LAC 46:XLIX.303, 503, 505, 511, 701, 709, 713, 903, 905, 1101, 1105, 1107, 1201, and 1301).....	1044
Board of Medical Examiners—Physician Practice; Dispensation of Medications (LAC 46:XLV.6506).....	1047
Bureau of Health Services Financing—Early and Periodic Screening—Diagnosis and Treatment Dental Program—Reimbursement Rate Reduction (LAC 50:XV.6905).....	1048
Home and Community-Based Services Waivers—Community Choices Waiver Reimbursement Methodology (LAC 50:XXI.9501).....	1048
Home and Community-Based Services Waivers—New Opportunities Waiver—Reimbursement Rate Reduction (LAC 50:XXI.14301).....	1049
Home and Community-Based Services Waivers—Residential Options Waiver—Reimbursement Rate Reduction (LAC 50:XXI.16901).....	1049
Home and Community-Based Services Waivers—Supports Waiver—Reimbursement Rate Reduction (LAC 50:XXI.6101)	1050
Home Health Program—Durable Medical Equipment—Reimbursement Rate Reduction (LAC 50:XIII.10301).....	1050
Home Health Program—Nursing and Home Health Aide Services—Reimbursement Rate Reduction (LAC 50:XIII.701).....	1050
Medicaid Provider Screening and Enrollment (LAC 50:I.Chapter 15).....	1051
Personal Care Services—Long Term—Cost Reporting Requirements (LAC 50:XV.12919).....	1052

Office for Citizens with Developmental Disabilities—Home and Community-Based Services Waivers New Opportunities Waiver—Reimbursement Rate Reduction (LAC 50:XXI.14301).....	1049
Home and Community-Based Services Waivers—Residential Options Waiver—Reimbursement Rate Reduction (LAC 50:XXI.16901).....	1049
Home and Community-Based Services Waivers—Supports Waiver—Reimbursement Rate Reduction (LAC 50:XXI.6101).....	1050
Office of Aging and Adult Services—Home and Community-Based Services Waivers—Community Choices Waiver—Reimbursement Methodology (LAC 50:XXI.9501).....	1048
Office of Public Health—Disease Reporting Requirements and Blood Bank Storage Temperature (LAC 51:II.105 and 113 and XIX.309).....	1052

State

Elections Division—Emergency Election Day Paper Ballot Procedures (LAC 31:I.Chapter 11).....	1055
----------------------------------------------------------------------------------------------	------

Transportation and Development

Office of Management and Finance—Geospatial Database (LAC 70:XXIX.Chapter 1).....	1058
Professional Engineering and Land Surveying Board—Naval Architecture/Marine Engineering and Flood Protection Levees (LAC 46:LXI.903, 1901, and 2909).....	1060

Wildlife and Fisheries

Wildlife and Fisheries Commission—Wild Seafood Certification Program (LAC 76:I.701).....	1062
Sharks and Sawfishes—Harvest Regulations (LAC 76:VII.357).....	1062

IV. NOTICES OF INTENT

Children and Family Services

Child Support Enforcement Section—Administrative Suspension of Licenses Issued by the State of Louisiana (LAC 67:III.2545).....	1063
Income Assignment (LAC 67:III.2509).....	1064
Economic Stability Section—Use of TANF Benefits (LAC 67:III.1259 and 5351).....	1066

Economic Development

Office of Business Development—Competitive Projects Tax Exemption Program (LAC 13:I.Chapter 47).....	1078
------------------------------------------------------------------------------------------------------	------

Education

Board of Elementary and Secondary Education—Bulletin 124—Supplemental Educational Services (LAC 28:CXXXV.Chapter 1).....	1068
Bulletin 135—Health and Safety (LAC 28:CLVII.305 and 307).....	1070
Student Financial Assistance Commission, Office of Student Financial Assistance Scholarship/Grant Programs—GO Grant Framework (LAC 28:IV.Chapter 12).....	1073
Office of Student Financial Assistance, Tuition Trust Authority—START Saving Program 2012 Interest Rate (LAC 28:VI.311 and 315).....	1077

Environmental Quality

Office of the Secretary, Legal Division—Asbestos-Containing Materials in Schools and State Buildings (LAC 33:III.2701, 2703, 2705, 2707, 2711, 2713, 2717, 2719, 2721, 2723, 2725, 2735, 2739, 2741 and 2799)(AQ329).....	1080
Emission Standard for Asbestos (Demo/Reno) (LAC 33:III.5151)(AQ330).....	1099

Governor

Cemetery Board—Cemetery Industry (LAC 46:XIII.Chapters 1-25).....	1107
-------------------------------------------------------------------	------

Health and Hospitals

Board of Examiners for Licensed Professional Counselors—LPC Practice and Code of Conduct (LAC 46:LX.Chapters 1-37).....	1121
Board of Nursing—Advance Practice Registered Nurses (LAC 46:XLVII.4503, 4505, 4507, 4511, 4513, and 4517).....	1147
Board of Pharmacy—Technician Training Programs (LAC 46:LIII.Chapter 9).....	1155
Bureau of Health Services Financing—Home and Community-Based Services Waivers Community Choices Waiver (LAC 50:XXI.8105, 8301, 8307, 8325, 8327, 8501, and 9501).....	1157
Intermediate Care Facilities for Persons with Developmental Disabilities—Non-State Facilities Reimbursement Methodology (LAC 50:VII.32903).....	1160
Personal Care Services—Long-Term—Policy Clarifications and Services (LAC 50:XV.Chapter 129).....	1161
Professional Services Program—Anesthesia Services Reimbursement Rate Reduction (LAC 50:IX.15133 and 15135).....	1167
Professional Services Program—Family Planning Service—Reimbursement Rate Reduction (LAC 50:IX.15143).....	1168
Office of Aging and Adult Services—Home and Community-Based Services Waivers Community Choices Waiver (LAC 50:XXI.8105, 8301, 8307, 8325, 8327, 8501, and 9501).....	1157
Personal Care Services—Long-Term—Policy Clarifications and Services (LAC 50:XV.Chapter 129).....	1161

Louisiana State University and Agricultural and Mechanical College

Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement Services and Property Management—University Pilot Procurement Code (LAC 34:XIII.Chapters 3-25).....	1169
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------

Public Safety and Corrections	
Office of the State Fire Marshal, Uniform Construction Code Council—State Uniform Construction Code (LAC 55:VI.301)	1182
Revenue	
Office of Alcohol and Tobacco Control—Responsible Vendor Program (LAC 55:VII.503, 505, 507, 509 and 511).....	1184
Transportation and Development	
Office of Engineering—Access Connection Permits (LAC 70:I.Chapter 15).....	1190
Automatic License Plate Camera Devices (LAC 70:II.527).....	1193
Treasury	
Board of Trustees of the Registrars of Voters Employees' Retirement System—Internal Revenue Code Provisions (LAC 58:XVII.Chapter 2).....	1195
Wildlife and Fisheries	
Wildlife and Fisheries Commission—Alligator Regulations (LAC 76:V.701).....	1203
Workforce Commission	
Office of Workers' Compensation—Workers' Compensation Medical Reimbursement Schedule (LAC 40:I.5157).....	1204
V. ADMINISTRATIVE CODE UPDATE	
Cumulative—January 2013 through March 2013	1209
VI. POTPOURRI	
Agriculture and Forestry	
Office of Agricultural and Environmental Sciences—Annual Quarantine Listing—Plant Protection and Quarantine	1211
Health and Hospitals	
Board of Pharmacy—Public Hearing—Substantive Changes to Proposed Rule; Compounding for Prescriber's Use	1213
Natural Resources	
Office of Conservation—Legal Notice—Docket No. Env 2013-01	1213
Public Hearing—Substantive Changes to Proposed Rule; Hydraulic Fracture Stimulation Operations (LAC 43:XIX.118).....	1214
Orphaned Oilfield Sites	1214
Office of the Secretary, Fishermen's Gear Compensation Fund—Underwater Obstructions Latitude/Longitude Coordinates.....	1215
Workforce Commission	
Office of Unemployment Insurance—Public Hearing—Substantive Changes to Proposed Rule Appealed Claims for Board of Review (LAC 40:IV.109 and 113)	1215
Office of Workers' Compensation—Public Hearing—Substantive Changes to Proposed Rule; Benefits for Unemployment Insurance (LAC 40:IV.Chapter 3).....	1217
VII. INDEX	1221

Executive Orders

EXECUTIVE ORDER BJ 13-05

Establishment of the Louisiana Interagency Council on Homelessness through the Housing and Transportation Planning and Coordinating Commission

WHEREAS, the State of Louisiana has established programs, such as the Emergency Solutions Grant and Permanent Supportive Housing programs, and the newly awarded Section 811 Project Rental Assistance Demonstration program that provide housing and services to help eliminate homelessness; and

WHEREAS, effectively addressing homelessness requires collaboration among state agencies, local governments, the private sector, and service provider networks to coordinate program development, deliver essential services, and provide housing; and

WHEREAS, while many state departments and agencies are impacted by and work to address the challenges presented by homelessness, there is currently no formally established centralized organization to coordinate and focus the work of those departments and agencies to ensure that state government is coordinating its efforts effectively with the efforts of the federal government, local governments, the private sector and service provider networks:

NOW THEREFORE, I, BOBBY JINDAL, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and the laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Housing and Transportation Planning and Coordinating Commission shall serve as Louisiana's state interagency council on homelessness.

SECTION 2: The Commission shall have the following functions and duties regarding homelessness:

A. Create Louisiana's Ten-Year Plan to End Homelessness;

B. Review and update annually Louisiana's Ten-Year Plan to End Homelessness;

C. Monitor and oversee implementation of Louisiana's Ten-Year Plan to End Homelessness;

D. Serve as a state clearinghouse for information on services, housing and transportation options for the homeless; and

E. Conduct other activities as may be appropriate and necessary.

SECTION 3: The Commission shall report to the Governor and the Louisiana Legislature annually.

SECTION 4: This order is effective upon signature and shall remain in effect until amended, modified, terminated or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 19th day of March, 2013.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
J. Thomas Schedler
Secretary of State
1304#100

Emergency Rules

DECLARATION OF EMERGENCY

Department of Children and Family Services Economic Stability Section

Child Welfare Emergency Assistance Services Program
(LAC 67:III.5597)

The Department of Children and Family Services (DCFS), Economic Stability Section, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend LAC 67:III, Subpart 15 Temporary Assistance for Needy Families (TANF) Initiatives, Chapter 55 TANF Initiatives, Section 5597 Child Welfare Emergency Assistance Services Program. This Emergency Rule shall be effective on March 22, 2013, and shall remain in effect for a period of 120 days.

Section 5597 Child Welfare Emergency Assistance Services Program is being amended to clarify the program's service period and financial eligibility criteria, which must mirror eligibility rules in effect as of August 21, 1996 under the Louisiana Aid to Families with Dependent Children (AFDC) Emergency Assistance Program.

The department considers emergency action necessary to prevent a threat to the health, safety, and welfare of TANF-eligible children who have been removed from their parents by the courts and are in need of emergency assistance to cover the urgent situation.

The authorization to promulgate emergency rules to facilitate the expenditure of temporary assistance for needy families (TANF) is contained in Act 13 of the 2012 Regular Session of the Louisiana Legislature.

Title 67

SOCIAL SERVICES

Part III. Economic Stability

Subpart 15. Temporary Assistance for Needy Families (TANF) Initiatives

Chapter 55. TANF Initiatives

§5597. Child Welfare Emergency Assistance Services Program

A. The Child Welfare Emergency Assistance Services Program will provide services to children who are removed from their parents by the courts and are in foster care. These services include case management and planning as performed by DCFS' staff. The types of assistance that meet the emergency situation may include shelter care, foster family care or emergency shelter care including food, clothing and supervision.

B. TANF eligibility is limited within any 12 month period to a single episode of need with a maximum duration of 12 months. TANF eligibility is also limited to families with income less than twice the state median income (SMI).

C. These services are TANF-eligible based on inclusion in the state's approved AFDC Emergency Assistance Program that was in effect as of August 21, 1996.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., P.L. 104-193, R.S. 46:231, and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 39:67 (January 2013), amended LR 39:

Suzy Sonnier
Secretary

1304#008

DECLARATION OF EMERGENCY

Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs (LAC 28:IV.Chapter 12)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend and re-promulgate the rules of the scholarship/grant programs (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1.1-3042.8, R.S. 17:3048.1, and R.S. 56:797.D(2)).

This rulemaking implements changes made by the Board of Regents to the GO Grant Program that decentralize the program to provide more autonomy to participating colleges and universities, particularly in determining award amounts.

This Emergency Rule is necessary to implement changes to the scholarship/grant programs to allow the Louisiana Office of Student Financial Assistance to effectively administer the programs. A delay in promulgating rules would have an adverse impact on the financial welfare of the eligible candidates. LASFAC has determined that this Emergency Rule is necessary in order to prevent imminent financial peril to the welfare of the affected recipients.

This Declaration of Emergency is effective March 11, 2013, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG13144E)

Title 28

EDUCATION

Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs

Chapter 12. Louisiana GO Grant

§1201. General Provisions

A. Legislative Authority

1.a. In accordance with the requirements of Act 695 of the 2004 Regular Session of the Legislature, the Board of Regents developed the GO Grant Program. The program was reviewed and approved by both the Senate Committee on Education and the House Committee on Education on April 12, 2007.

b. Act 655 of the 2010 Regular Session of the Legislature establishes the GO Grant Program in R.S. 17:3046 and 3046.1. The Act provides that the Board of Regents shall establish the criteria for initial and continuing eligibility, the method for determining the award amount, and other requirements not otherwise provided in the statute. The Act further provides that the GO Grant Program shall be

administered by the Louisiana Student Financial Assistance Commission through the Louisiana Office of Student Financial Assistance.

2. The Louisiana Office of Student Financial Assistance (LOSFA) administers the GO Grant Program in accordance with R.S. 17:3046 and a memorandum of understanding by and between the Louisiana Board of Regents and the Louisiana Student Financial Assistance Commission.

B. Description and Purpose. The Louisiana GO Grant assists those students who can demonstrate financial need to pay for the cost of postsecondary education. The GO Grant is used to pay a portion of the cost of attendance at an eligible Louisiana institution.

C. Award Amount

1. The minimum and maximum annual award amounts and the lifetime award amount, if any, shall be established by the Board of Regents on an annual basis and such amounts shall be published by LOSFA to the eligible Louisiana institutions.

2. Each institution shall determine the award amounts for eligible students at that institution based on the requirements in these rules, the allocation to the institution, the institution's financial aid packaging policy, and the guidance established by the Board of Regents and published by LOSFA.

D. The total amount awarded for GO Grants during any academic year is limited to the total amount appropriated for the award for the academic year. Eligibility for an award during any particular semester, quarter or term does not guarantee that a student will receive the GO Grant in a subsequent semester, quarter or term.

E. Allocation of Funds. The amount allocated to an eligible institution will be determined by dividing the amount of the institution's prior year's allocation that was expended by the total amount appropriated for that academic year multiplied by the total amount appropriated for the current year.

F. Reallocation of Funds. Uncommitted funds allocated to a particular institution shall be reallocated if not committed by the deadline set by LOSFA. Uncommitted funds shall be apportioned among those institutions that have committed all funds allocated to the institution before the deadline, and have students who are eligible for an award and did not receive it.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2614 (December 2007), amended LR 34:236 (February 2008), LR 35:2349 (November 2009), LR 39:

§1203. Definitions

A. The following definitions shall be applicable to the Louisiana GO Grant Program. Words and terms not otherwise defined in this Chapter shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

Academic Year—the *academic year* begins with the fall semester or term of the award year, includes the winter term, if applicable, and concludes with the completion of the

spring semester or term of the award year. Summer terms are not included in the *academic year* unless authorized by the Board of Regents and only if the post-secondary institution provides students with Pell Grants or financial need grants during the summer session.

Administering Agency—the Louisiana Student Financial Assistance Commission through the Louisiana Office of Student Financial Assistance (LOSFA).

Cost of Attendance—the total cost for a student to attend a particular eligible Louisiana institution, usually expressed as an academic year figure. This cost shall be determined by the institution attended in compliance with Title IV of the Higher Education Act of 1965, as amended, and shall be annually updated and adopted by the institution.

Dependent Student—a student who does not qualify as an independent student for purposes of qualifying for Title IV aid.

Eligible Louisiana Institution—

a. Louisiana public colleges or universities and regionally accredited independent colleges or universities in the state that are members of the Louisiana Association of Independent Colleges and Universities; and

b. Louisiana public colleges that have been granted regional candidacy status, but are not yet eligible to participate in Title IV programs. Candidacy status institutions must require students to complete a FAFSA and the institution must determine a student's eligibility in accordance with rules under this Chapter.

Enrollment—registration in programs of study at an eligible Louisiana institution.

Excess Award—an award in excess of what is authorized by these rules and the guidance established by the Board of Regents and published by LOSFA.

Expected Family Contribution (EFC)—an amount, determined by a formula established by Congress, that indicates how much of a family's financial resources should be available to help pay for the student's cost of attendance. Factors such as taxable and nontaxable income, assets (such as savings and checking accounts), and benefits (for example, unemployment or Social Security) are all considered in this calculation.

Federal Pell Grant—the Pell Grant provided under Title IV of the Higher Education Act of 1965, as amended.

Financial Need—the student's costs of attendance at the institution attended minus the expected family contribution (EFC).

Financial Need Grant—an institutional grant provided by the state for students with financial need as evidenced by the data reported on the FAFSA at a Louisiana public college that has been granted regional candidacy status and is eligible to participate in the Go Grant Program.

Full Time—a student enrolled in an eligible Louisiana institution who is considered *full time* by the school.

Go Grant Award Amount—the award amount actually paid during an academic year.

Half Time—a student enrolled in an eligible Louisiana institution who is not full time but is enrolled in at least six semester credit hours, or four hours at a term school.

Independent Student—a student who meets at least one of the criteria listed in Subparagraphs a-f or has been determined independent by a financial aid officer exercising

professional judgment in accordance with applicable provisions of the Higher Education Act of 1965, as amended:

a. reached 24 years of age prior to January of the year preceding the academic year for which the student is applying for aid;

b. is currently serving on active duty for purposes other than training or is a veteran of the U.S. Armed Forces, including a student who was activated to serve in Operation Desert Storm;

c. is an orphan or a ward of the court or was a ward of the court until age 18;

d. has legal dependents other than a spouse;

e. is a graduate or professional student;

f. is married.

Less Than Half Time—a student enrolled in an eligible Louisiana institution who is not full time and is enrolled in less than six semester credit hours or four hours at a term school.

Louisiana Resident—

a. a dependent or independent student whose true, fixed, and permanent home of residence is Louisiana as reported on the Free Application for Federal Student Aid (FAFSA);

b. a dependent student whose non-custodial parent completes a residency affidavit in Subparagraph e below that establishes Louisiana residency;

c. a dependent student whose parent is transferred out of Louisiana temporarily by his/her employer and that parent completes a residency affidavit in Subparagraph e below that establishes Louisiana residency;

d. a dependent student whose parent is on active duty in the Armed Forces and who is stationed in Louisiana under permanent change of station orders, or an independent student who is on active duty military status in the Armed Forces and is stationed in Louisiana under permanent change of station orders;

e. if the dependent or independent student does not report Louisiana as his true, fixed, and permanent home of residence as Louisiana on the FAFSA, the administering agency may require an independent student applicant or the parent of a dependent student applicant to show proof of residency. Residency may be established by completion of a standard affidavit developed by the administering agency. Such affidavits must be completed in their entirety by the independent student applicant or by at least one parent of the dependent student applicant and be sworn to and notarized by a licensed notary public. Further, the affiant shall be required to submit records in support of the affidavit to include the following records and such other records as may be required by the administering agency:

i. if registered to vote, a Louisiana voter registration card; and

ii. if licensed to drive a motor vehicle, a Louisiana driver's license; and

iii. if owning a motor vehicle located in Louisiana, a Louisiana registration for that vehicle; and

iv. if earning a reportable income, a Louisiana tax return.

Satisfactory Academic Progress—a standard established in accordance with the Higher Education Act of 1965, as amended, by the institution at which a GO Grant recipient is enrolled for measuring a student's progress in his or her educational program.

Undergraduate Program—a program of study that is designed to lead to a certificate or undergraduate degree.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3046 et seq.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2615 (December 2007), amended LR 34:236 (February 2008), LR 35:647 (April 2009), LR 35:2349 (November 2009), LR 36:2853 (December 2010), LR 39:

§1205. Initial Eligibility

A. To be initially eligible for a Louisiana GO Grant, a student must:

1. complete the Free Application for Federal Student Aid for the year during which he intends to enroll in college;

2. be a Louisiana resident;

3. receive a federal Pell Grant or a financial need grant;

4. have remaining financial need; and

5. be enrolled in an undergraduate program on at least a half time basis at an eligible Louisiana institution through the fourteenth class day for semester schools, or the ninth class day for quarter and term schools, or for any qualifying summer sessions, at the end of the last day to drop and receive a full refund for the full summer session.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3046 et seq.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2616 (December 2007), amended LR 34:238 (February 2008), LR 35:2349 (November 2009), LR 36:2853 (December 2010), LR 37:1389 (May 2011), LR 38:1953 (August 2012), LR 39:

§1207. Continuing Eligibility

A. A student's eligibility will be reevaluated on the same schedule as eligibility for a federal Pell Grant or a financial need grant is determined at the institution, but at least once annually.

B. To continue to be eligible for a Louisiana GO Grant, a student must:

1. complete the Free Application for Federal Student Aid or the renewal application for each year he enrolls in college to be considered for a Pell Grant and the Go Grant;

2. continue to receive the federal Pell Grant or a financial need grant;

3. have remaining financial need; and

4. be enrolled in an undergraduate program on at least a half time basis at an eligible Louisiana institution through the fourteenth class day for semester schools, or the ninth class day for quarter and term schools, or for any qualifying summer sessions, at the end of the last day to drop and receive a full refund for the full summer session.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3046 et seq.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2616 (December 2007), amended LR 34:238 (February 2008), LR 35:2349 (November 2009), LR 36:2853 (December 2010), LR 39:

§1209. Responsibilities of Eligible Louisiana Institutions

A. Initial Eligibility

1.a. Eligible Louisiana institutions must determine whether the student meets the criterion in Subparagraph a of the definition of *Louisiana resident* in §1203.

b. If this criterion is not met, the student may request that LOSFA make a determination of residency under Subparagraph e of the definition of *Louisiana resident* in §1203.

2. Eligible Louisiana institutions must determine whether a student meets the initial eligibility criteria enumerated in §1205.B.

B. Continuing Eligibility. Eligible Louisiana institutions must determine whether a student meets the continuing eligibility criteria enumerated in §1207 on the same schedule as eligibility for a Pell Grant or a financial need grant is determined at the institution, but at least once annually.

C. Packaging Policy

1. Eligible Louisiana institutions must establish and use a policy on GO Grant packaging that provides:

a. procedures for compliance with these rules and the guidance established by the Board of Regents and published by LOSFA for determining the award amount;

b. record retention to comply with Subsection I of this Section;

c. the basis used to establish any award amount that is less than the maximum award amount allowed;

d. procedures for distribution of GO Grant funds that ensure the grant is provided to students with the most financial need;

e. priority for students who are 25 or over;

f. awards amounts for less than full time students; and

g. procedures for identification of transfer students and ensuring transfer students receive awards on the same basis as home students.

2. Eligible Louisiana institutions must revise the institution's GO Grant packaging policy as necessary to reflect changes to the GO Grant program rules or guidance issued by the Board of Regents or both.

D. Award Amount. Eligible Louisiana institutions must establish the award amounts for each individual student based on the institution's financial aid packaging policy. The amount awarded must comply with the requirements and limitations established in these rules and the guidance published by LOSFA.

E. Submission of Payment Requests. Each semester, quarter or term, eligible Louisiana institutions shall submit a payment request to LOSFA for students enrolled at the institution who have been determined eligible for a Louisiana GO Grant as follows:

1. for each student eligible for a Louisiana GO Grant who is enrolled at the end of the fourteenth class day for semester schools, or the ninth class day for quarter and term schools, or for any qualifying summer sessions, at the end of

the last day to drop and receive a full refund for the full summer session;

2. the payment request shall include the Social Security number, college code, term, date, hours attempted, award amount, and amount requested for each student;

3. for students who are enrolled in more than one eligible Louisiana institution, the home school (school paying the Pell Grant or a financial need grant) is responsible for submitting a payment request for the Go Grant based on the total hours enrolled at all institutions.

F. Over Payments

1. No institution shall submit a payment request for GO Grant funds which would result in a student receiving an annual total of more than is authorized in §1201.C.

2. Eligible Louisiana institutions certify, by submitting a payment request for a GO Grant, that the institution will reimburse LOSFA:

a. for the total amount of any award that is disbursed to ineligible students; and

b. for any amount of an award that is in excess of the maximum annual award or in excess of the maximum lifetime award (if one is established).

G. Excess Award. In the event an excess award occurs during the fall semester or quarter or the winter quarter due to receipt of additional gift aid, the school shall reduce the award amount for the spring accordingly. In the event an excess award occurs during the spring semester or quarter due to receipt of additional gift aid, the school shall document the reason for the excess award.

H. Over Award. In the event the student's total aid exceeds his financial need or the cost of attendance, any federal loan aid included in the total aid package shall be reduced, then institutional and other aid in accordance with institutional practice, then the Louisiana GO Grant, then a TOPS Award, if applicable, shall be reduced by the amount of any remaining over award.

I. Records Retention. Records pertaining to Louisiana GO Grant awards are subject to audit as required by LASFAC, the Louisiana Board of Regents, and the Louisiana Legislative Auditor. Eligible Louisiana institutions shall maintain all records for a minimum of three years from creation. All such records shall be made available upon request by LASFAC, the Louisiana Board of Regents and/or the Louisiana Legislative Auditor.

J. Each eligible Louisiana institution shall provide a copy of its GO Grant packaging policy as required by §1209.C to LOSFA, when requested.

K. Audits. Eligible Louisiana institutions that participate in the Louisiana GO Grant Program grant LOSFA and the Louisiana Legislative Auditor the right to inspect records and perform on-site audits of each institution's administration of the program for the purpose of determining the institution's compliance with state law and applicable rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3046 et seq.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2617 (December 2007), amended LR 34:239 (February 2008), LR 35:2349 (November 2009), LR 36:2853 (December 2010), LR 39:

§1213. Responsibilities of LOSFA

A. LOSFA shall pay each eligible Louisiana institution the amount requested by the eligible Louisiana institution in accordance with the provisions of §1211.E.

B. LOSFA shall publish to the eligible Louisiana institutions on an annual basis:

1. the minimum and maximum annual awards, and the maximum lifetime award, if any;
2. any limitations on awards;
3. any changes in requirements for calculation of awards; and
4. any other changes in the program made by the Board of Regents.

C. LOSFA shall determine the residency of students who do not meet the criteria enumerated in Subparagraph a of the definition of *Louisiana Resident* in §1203 and notify eligible Louisiana institutions of its determination(s).

D. LOSFA shall maintain a database of all students who have received the GO Grant, included Social Security number, college code, term, date, hours attempted, award amount, annual amount received, and aggregate amount received. In the event LOSFA receives a payment request in an amount that would exceed the maximum amount payable to a student, LOSFA will require the school to rebill.

E. Adequacy of Funding

1. After the receipt of fall semester or term payment requests, LOSFA shall determine whether sufficient funds are available to pay all anticipated awards for subsequent semesters, terms and sessions of the academic year.

2. In the event projections indicate sufficient funds are not available, LOSFA shall notify the Board of Regents.

3. LOSFA will provide to the Board of Regents information that is necessary to determine appropriate funding amounts upon the request of the Board of Regents.

F. LOSFA shall audit eligible Louisiana institutions to ensure compliance with these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3046 et seq.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2617 (December 2007), amended LR 34:239 (February 2008), LR 35:2350 (November 2009), LR 36:2853 (December 2010), LR 39:

§1215. Responsibilities of LASFAC

A. LASFAC shall promulgate administrative rules in accordance with the Administrative Procedure Act, in consultation with the Louisiana Board of Regents and in accordance with a memorandum of understanding entered into by and between LASFAC and the Louisiana Board of Regents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2618 (December 2007), amended LR 39:

§1217. Responsibilities of the Board of Regents

A. At least on an annual basis, the Board of Regents shall review the amount appropriated for this program, and:

1. determine the minimum and maximum amount to be received by students attending school;
2. determine whether there is a maximum lifetime award and, if so, set the maximum;
3. determine what, if any, limitations should be placed on awards;
4. establish any changes in requirements for calculation of awards; and
5. provide for any other changes in the program.

B. The Board of Regents shall provide notice to LOSFA of any changes to the program in sufficient time to allow timely implementation.

C. In the event of receipt of notice of a shortfall and additional funds are not allocated for payment of all anticipated awards for subsequent semesters, terms and sessions during the academic year, the Board of Regents shall develop, approve and deliver a plan to LOSFA to address the shortfall.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3046 et seq.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 35:2350 (November 2009), LR 36:2853 (December 2010), LR 39:

George Badge Eldredge
General Counsel

1304#002

DECLARATION OF EMERGENCY

Tuition Trust Authority Office of Student Financial Assistance

START Savings Program (LAC 28:VI.311 and 315)

The Louisiana Tuition Trust Authority (LATTA) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend rules of the Student Tuition Assistance and Revenue Trust (START Saving) Program (R.S. 17:3091 et seq.).

This rulemaking increases the amount of interest earned during the year an account is terminated that will not be refunded from \$3 to \$10 dollars. This rulemaking adds the applicable interest rates for the 2012 calendar year.

This Emergency Rule is necessary to allow the Louisiana Office of Student Financial Assistance and educational institutions to effectively administer these programs. A delay in promulgating rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. LATTA has determined that this Emergency Rule is necessary in order to prevent imminent financial peril to the welfare of the affected students.

This Declaration of Emergency is effective on March 11, 2013, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (ST13145E)

**Title 28
EDUCATION**

**Part VI. Student Financial Assistance—Higher
Education Savings**

Chapter 3. Education Savings Account

**§311. Termination, Refund, and Rollovers of an
Education Savings Account**

A. - G. ...

H. Refund Payments. Payment of refunds for voluntary termination under §311.F or partial refunds of accounts pursuant to §311.F.3 shall be made within 30 days of the date on which the account was terminated. The termination refund shall consist of the principal remaining in the account and interest remaining in the account accrued on the principal through the end of the last calendar year. Interest earned in excess of \$10 during the calendar year of termination will be refunded within 45 days of the date the state treasurer has announced the interest rate for the preceding year. Interest earned of \$10 or less during the calendar year of termination will be forfeited to the Louisiana Education and Tuition Savings Fund.

I. - I.2.b. ...

AUTHORITY NOTE: Promulgated in accordance with 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:717 (June 1997), amended LR 24:1273 (July 1998), repromulgated LR 26:2265 (October 2000), amended LR 27:38 (January 2001), LR 27:1882 (November 2001), LR 28:779 (April 2002), LR 30:790 (April 2004), LR 31:639 (March 2005), LR 32:1434 (August 2006), LR 32:2240 (December 2006), LR 33:444 (March 2007), LR 35:236 (February 2009), LR 36:492 (March 2010), LR 36:2551 (November 2010), LR 39:

§315. Miscellaneous Provisions

A. - B.26. ...

27. For the year ending December 31, 2012, the Louisiana Education Tuition and Savings Fund earned an interest rate of 2.52 percent.

28. For the year ending December 31, 2012, the Savings Enhancement Fund earned an interest rate of 2.57 percent.

C. - S.2. ...

AUTHORITY NOTE: Promulgated in accordance with 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997), amended LR 24:1274 (July 1998), LR 26:1263 (June 2000), repromulgated LR 26:2267 (October 2000), amended LR 27:1221 (August 2001), LR 27:1884 (November 2001), LR 28:1761 (August 2002), LR 28:2335 (November 2002), LR 29:2038 (October 2003), repromulgated LR 29:2374 (November 2003), amended LR 30:791 (April 2004), LR 30:1472 (July 2004), LR 31:2216 (September 2005), LR 32:1434 (August 2006), LR 32:2240 (December 2006), LR 33:2359 (November 2007), LR 34:1886 (September 2008), LR 35:1492 (August 2009), LR 36:492 (March 2010), LR 36:2030 (September 2010), LR 38:1954 (August 2012), LR 39:

George Badge Eldredge
General Counsel

1304#003

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Bureau of Health Services Financing
and
Office of Behavioral Health**

Behavioral Health Services
Physician Payment Methodology
(LAC 50:XXXIII.Chapter 17)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health adopt LAC 50:XXXIII.Chapter 17 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions to implement a coordinated behavioral health services system under the Medicaid Program, called the Louisiana Behavioral Health Partnership (LBHP), to provide adequate coordination and delivery of behavioral health services through the utilization of a Statewide Management Organization (*Louisiana Register*, Volume 38, Number 2).

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health now propose to amend the provisions governing the reimbursement of physician services rendered in the LBHP in order to establish a distinct payment methodology that is independent of the payment methodology established for physicians in the Professional Services Program.

This action is being taken to protect the public health and welfare of Medicaid recipients who rely on behavioral health services by ensuring continued provider participation in the Medicaid Program. It is estimated that implementation of this Emergency Rule will have no fiscal impact to the Medicaid Program for state fiscal year 2012-2013.

Effective April 20, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health amend the provisions governing behavioral health services rendered in the Medicaid Program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXXIII. Behavioral Health Services

Subpart 2. General Provisions

**Chapter 17. Behavioral Health Services
Reimbursements**

§1701. Physician Payment Methodology

A. The reimbursement rates for physician services rendered under the Louisiana Behavioral Health Partnership (LBHP) shall be a flat fee for each covered service as

specified on the established Medicaid fee schedule. The reimbursement rates shall be based on a percentage of the Louisiana Medicare Region 99 allowable for a specified year.

B. Effective for dates of service on or after April 20, 2013, the reimbursement for behavioral health services rendered by a physician under the LBHP shall be 75 percent of the 2009 Louisiana Medicare Region 99 allowable for services rendered to Medicaid recipients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Interim Secretary

1304#060

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing and Office of Behavioral Health

Behavioral Health Services|
Statewide Management Organization
LaCHIP Affordable Plan Benefits Administration
(LAC 50:XXXIII.103)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health amend LAC 50:XXXIII.103 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions to implement a coordinated behavioral health services system under the Louisiana Medicaid Program to provide services through the utilization of a statewide management organization that is responsible for the necessary administrative and operational functions to ensure adequate coordination and delivery of behavioral health services (*Louisiana Register*, Volume 38, Number 2).

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health promulgated an Emergency Rule which amended the February 2012 Rule in order to include the administration of behavioral health services covered under the LaCHIP affordable plan (phase 5) (*Louisiana Register*, Volume 38, Number 12). LaCHIP Affordable Plan benefits, including behavioral health services, were administered by the Office of Group Benefits. The administration of these services was transferred to the statewide management organization under the Louisiana Behavioral Health Partnership. This Emergency Rule is being promulgated to continue the provisions of the January 1, 2013 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs, and to promote the health and welfare of LaCHIP Affordable Plan recipients.

Effective May 2, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing behavioral health services coordinated by the statewide management organization to include recipients covered under the LaCHIP Affordable Plan.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXXIII. Behavioral Health Services

Subpart 1. Statewide Management Organization

Chapter 1. General Provisions

§103. Recipient Participation

A. The following Medicaid recipients shall be mandatory participants in the coordinated behavioral health system of care:

1. - 6. ...
7. Title XXI SCHIP populations, including:
 - a. LaCHIP Phases 1 - 3; and
 - b. LaCHIP Affordable Plan (Phase 5).

B. ...

C. Notwithstanding the provisions of §103.A above, the following Medicaid recipients are excluded from enrollment in the PIHP/SMO:

1. - 7. ...
8. recipients who receive services through the Program of All-Inclusive Care for the Elderly (PACE);
9. recipients enrolled in the Low Income Subsidy Program;
10. participants in the Take Charge Family Planning Waiver; and
11. recipients enrolled in the LaMOMS Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:361 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is

responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Interim Secretary

1304#066

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Coordinated Care Network—LACHIP Affordable Plan
Benefits Administration (LAC 50:I.3103)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:I.3103 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions which implemented a coordinated system of care in the Medicaid Program designed to improve performance and health care outcomes through a healthcare delivery system called coordinated care networks, also known as the BAYOU HEALTH Program (*Louisiana Register*, Volume 37, Number 6).

The department promulgated an Emergency Rule which amended the provisions governing the coordinated care networks in order to include health care services provided to LaCHIP Affordable Plan recipients in the BAYOU HEALTH Program (*Louisiana Register*, Volume 38, Number 12). These services were administered by the Office of Group Benefits. The administration of these services were transferred to the health plans participating in the BAYOU HEALTH Program. This Emergency Rule is being promulgated to continue the provisions of the January 1, 2013 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs and to promote the health and welfare of recipients enrolled in the LaCHIP Affordable Plan.

Effective May 2, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing coordinated care networks in order to include Affordable Plan recipients in the BAYOU HEALTH Program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part I. Administration

Subpart 3. Medicaid Coordinated Care

Chapter 31. Coordinated Care Network

§3103. Recipient Participation

A. The following Medicaid recipients shall be mandatory participants in coordinated care networks:

1. - 1.c. ...

d. uninsured women under the age of 65 who have been screened through the Centers for Disease Control

National Breast and Cervical Cancer Early Detection Program and identified as being in need of treatment for breast and/or cervical cancer, including pre-cancerous conditions and early stage cancer, and are not otherwise eligible for Medicaid;

e. ...

f. children under the age of 19 enrolled in the LaCHIP Affordable Care Plan (Phase 5); and

A.2. - B.1.b.v. ...

NOTE. Repealed.

C. ...

D. Participation Exclusion

1. The following Medicaid and/or CHIP recipients are excluded from participation in a CCN and cannot voluntarily enroll in a CCN. Individuals who:

a. - g. ...

h. are participants in the Take Charge Family Planning Waiver Program;

i. are eligible through the Tuberculosis Infected Individual Program; or

j. are enrolled in the Louisiana Health Insurance Premium Payment (LaHIPP) Program.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:1573 (June 2011), amended LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Interim Secretary

1304#067

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Coordinated Care Network—Physician Services
Reimbursement Methodology (LAC 50:I.3307 and 3509)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:I.3307 and §3509 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions which

implemented a coordinated system of care in the Medicaid Program designed to improve quality of care and health care outcomes through a healthcare delivery system called coordinated care networks, also known as the BAYOU HEALTH Program (*Louisiana Register*, Volume 37, Number 6).

The Patient Protection and Affordable Care Act (PPACA) requires states to reimburse certain physician services (if they were covered) at an increased rate. In compliance with PPACA and federal regulations, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for physician services rendered by health plans in the coordinated care networks to increase the reimbursement rates (*Louisiana Register*, Volume 39, Number 1). This Emergency Rule is being promulgated to continue the provisions of the January 1, 2013 Emergency Rule. This action is being taken to avoid federal sanctions and to secure enhanced federal funding.

Effective May 2, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for physician services rendered by health plans in the coordinated care networks.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part I. Administration

Subpart 3. Medicaid Coordinated Care

Chapter 33. Coordinated Care Network Shared Savings Model

§3307. Reimbursement Methodology

A. - F.3.1. ...

m. durable medical equipment and supplies;

n. orthotics and prosthetics; and

o. payments made to providers for purposes of complying with section 1932(f) of the Social Security Act and 42 CFR 438.6(c)(5)(vi).

F.4. - F.8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:1581 (June 2011), amended LR 39:

Chapter 35. Coordinated Care Network Managed Care Organization Model

§3509. Reimbursement Methodology

A. - A.5. ...

6. A CCN-P shall be reimbursed payments in order to comply with Section 1932(f) of the Social Security Act and 42 CFR 439.6(c)(5)(vi) on a quarterly basis or other period specified by DHH.

a. For calendar years 2013 and 2014 the CCN-P shall make payments to designated physicians consistent with 42 CFR Part 447, Subpart G, at least equal to the amounts set forth and required under Part 447, Subpart G, and the provisions of this Chapter, consistent with 42 CFR 438.5 and 438.804 as approved by CMS and as specified in the terms and conditions of the contract between DHH and the CCN-P.

B. - J.2. ...

a. Repealed.

3. For calendar years 2013 and 2014, the CCN-P shall make payments to designated physicians consistent with 42

CFR Part 447, Subpart G, at least equal to the amounts set forth and required under Part 447, Subpart G, and the provisions of this Chapter, as specified in the terms and conditions of the contract between DHH and the CCN-P. The CCN-P shall also provide documentation to the state sufficient to enable the state and CMS to ensure that provider payments increase as required by paragraph 42 CFR 438.6(c)(5)(vi)(A) of this Section.

a. The term *member* shall include the patient, parent(s), guardian, spouse or any other legally responsible person of the member being served.

4. The CCN-P may enter into alternative payment arrangements with its network providers or potential providers with prior approval by the department.

a. The CCN-P shall not enter into alternative payment arrangements with federally qualified health centers or rural health clinics as the CCN-P is required to reimburse these providers according to the published FQHC/RHC Medicaid prospective payment schedule rate in effect on the date of service, whichever is applicable.

M. - N.2.a. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:1587 (June 2011), amended LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Interim Secretary

1304#068

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Coordinated Care Network
Repeal of Dental Benefits Plan
(LAC 50:I.Chapter 29)

The Department of Health and Hospitals, Bureau of Health Services Financing hereby rescinds the January 1, 2013 and February 20, 2013 Emergency Rules which established a dental benefits plan through a coordinated care network for Medicaid recipients under 21 years of age covered under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The department promulgated an Emergency Rule which adopted provisions governing Medicaid coordinated care in order to establish a dental benefits plan through a coordinated care network for all Medicaid recipients under 21 years of age covered in BAYOU HEALTH [the Louisiana Medicaid Program] (*Louisiana Register*, Volume 39, Number 1). The department amended the provisions of the January 1, 2013 Emergency Rule in order to clarify the coverage provisions, enrollment/disenrollment criteria, and the reimbursement methodology (*Louisiana Register*, Volume 39, Number 2).

Upon further consideration, the department has now determined that it is necessary to rescind the January 1, 2013 and February 20, 2013 Emergency Rules governing Medicaid coordinated care network.

Effective April 20, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing rescinds the Emergency Rules governing Medicaid coordinated care which appeared in the January 20, 2013 edition of the *Louisiana Register* on pages 19-25 and the February 20, 2013 edition of the *Louisiana Register* on pages 238-244.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Interim Secretary

1304#061

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Crisis Receiving Centers—Licensing Standards (LAC 48:I.Chapters 53 and 54)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 48:I.Chapters 53 and 54 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 28:2180.13. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1), et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt provisions to establish licensing standards for Level III crisis receiving centers (CRCs) in order to provide intervention and crisis stabilization services for individuals who are experiencing a behavioral health crisis. This action is being taken to prevent imminent peril to the public health, safety or welfare of behavioral health clients who are in need of crisis stabilization services. It is anticipated that implementation of this Emergency Rule will have no programmatic costs for state fiscal year 2012-2013.

Effective April 20, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing adopts

provisions governing licensing standards for Level III crisis receiving centers.

Title 48

PUBLIC HEALTH—GENERAL

Part 1. General Administration

Subpart 3. Licensing and Certification

Chapter 53. Level III Crisis Receiving Centers

Subchapter A. General Provisions

§5301. Introduction

A. The purpose of this Chapter is to:

1. provide for the development, establishment, and enforcement of statewide licensing standards for the care of patients and clients in Level III crisis receiving centers (CRCs);

2. ensure the maintenance of these standards; and

3. regulate conditions in these facilities through a program of licensure which shall promote safe and adequate treatment of clients of behavioral health facilities.

B. The purpose of a CRC is to provide intervention and stabilization services in order for the client to achieve stabilization and be discharged and referred to the lowest appropriate level of care that meets the client's needs. The estimated length of stay in a CRC is 3-7 days.

C. In addition to the requirements stated herein, all licensed CRCs shall comply with applicable local, state, and federal laws and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5303. Definitions

Active Client—a client of the CRC who is currently receiving services from the CRC.

Administrative Procedure Act—R.S. 49:950 et seq.

Administrative Review—Health Standards Section's review of documentation submitted by the center in lieu of an on-site survey.

Adult—a person that is at least 18 years of age.

Authorized Licensed Prescriber—a physician or nurse practitioner licensed in the state of Louisiana and with full prescriptive authority authorized by the CRC to prescribe treatment to clients of the specific CRC at which he/she practices.

Building and Construction Guidelines—structural and design requirements applicable to a CRC; does not include occupancy requirements.

Coroner's Emergency Certificate (CEC)—a certificate issued by the coroner pursuant to R.S. 28:53.3.

Change of Ownership (CHOW)—the sale or transfer, whether by purchase, lease, gift or otherwise, of a CRC by a person/corporation of controlling interest that results in a change of ownership or control of 30 percent or greater of either the voting rights or assets of a CRC or that results in the acquiring person/corporation holding a 50 percent or greater interest in the ownership or control of the CRC.

CLIA—clinical laboratory improvement amendment.

Client Record—a single complete record kept by the CRC which documents all treatment provided to the client. The record may be electronic, paper, magnetic material, film or other media.

Construction Documents—building plans and specifications.

Contraband—any object or property that is against the CRC’s policies and procedures to possess.

Level III Crisis Receiving Center (or Center or CRC)—an agency, business, institution, society, corporation, person or persons, or any other group, licensed by the Department of Health and Hospitals to provide crisis identification, intervention and stabilization services for people in behavioral crisis. A CRC shall be no more than 16 beds.

Crisis Receiving Services—services related to the treatment of people in behavioral crisis, including crisis identification, intervention and stabilization.

Department—the Louisiana Department of Health and Hospitals.

Direct Care Staff—any member of the staff, including an employee or contractor, that provides the services delineated in the comprehensive treatment plan. Food services, maintenance and clerical staff and volunteers are not considered as direct care staff.

Disaster or Emergency—a local, community-wide, regional or statewide event that may include, but is not limited to:

1. tornados;
2. fires;
3. floods;
4. hurricanes;
5. power outages;
6. chemical spills;
7. biohazards;
8. train wrecks; or
9. declared health crisis.

Division of Administrative Law (DAL)—The Louisiana Department of State Civil Service, Division of Administrative Law or its successor entity.

Grievance—a formal or informal written or verbal complaint that is made to the CRC by a client or the client’s family or representative regarding the client’s care, abuse or neglect when the complaint is not resolved at the time of the complaint by staff present.

HSS—the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Care Integrity, Health Standards Section.

Human Services Field—an academic program with a curriculum content in which at least 70 percent of the required courses for the major field of study are based upon the core mental health disciplines.

Licensed Mental Health Professional (LMHP)—an individual who is licensed in the state of Louisiana to diagnose and treat mental illness or substance abuse, acting within the scope of all applicable state laws and their professional license. A LMHP must be one of the following individuals licensed to practice independently:

1. a physician/psychiatrist;
2. a medical psychologist;
3. a licensed psychologist;
4. a licensed clinical social worker (LCSW);
5. a licensed professional counselor (LPC);
6. a licensed marriage and family therapist (LMFT);
7. a licensed addiction counselor (LAC); or
8. an advanced practice registered nurse or APRN (must be a nurse practitioner specialist in adult psychiatric and mental health and family psychiatric and mental health, or a certified nurse specialist in psychosocial, gerontological

psychiatric mental health, adult psychiatric and mental health and child-adolescent mental health and may practice to the extent that services are within the APRN’s scope of practice).

LSBME—Louisiana State Board of Medical Examiners.

MHERE—mental health emergency room extension operating as a unit of a currently-licensed hospital.

Minor—a person under the age of 18.

OBH—the Department of Health and Hospitals, Office of Behavioral Health.

On-duty—scheduled, present, and awake at the site to perform job duties.

On-call—immediately available for telephone consultation and less than one hour from ability to be on duty.

OHSEP—Office of Homeland Security and Emergency Preparedness.

OPC—order for protective custody issued pursuant to R.S. 28:53.2.

OSFM—the Louisiana Department of Public Safety and Corrections, Office of State Fire Marshal.

PEC—an emergency certificate executed by a physician, psychiatric mental health nurse practitioner, or psychologist pursuant to R.S. 28:53.

Physician—an individual who holds a medical doctorate or a doctor of osteopathy from a medical college in good standing with the LSBME and a license, permit, certification, or registration issued by the LSBME to engage in the practice of medicine in the state of Louisiana.

Qualifying Experience—experience used to qualify for any position that is counted by using one year equals 12 months of full-time work.

Seclusion Room—a room that may be secured in which one client may be placed for a short period of time due to the client’s increased need for security and protection.

Shelter-in-place—when a center elects to stay in place rather than evacuate when located in the projected path of an approaching storm of tropical storm strength or a stronger storm.

Sleeping Area—a single constructed room or area that contains a minimum of three beds.

Tropical Storm Strength—a tropical cyclone in which the maximum sustained surface wind speed (using the U.S. 1 minute average standard) ranges from 34 kt (39 mph 17.5 m/s) to 63 kt (73 mph 32.5 mps).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Subchapter B. Licensing

§5309. General Licensing Provisions

A. All entities providing crisis receiving services shall be licensed by the Department of Health and Hospitals (DHH). It shall be unlawful to operate as a CRC without a license issued by the department. DHH is the only licensing authority for CRCs in Louisiana.

B. A CRC license authorizes the center to provide crisis receiving services.

C. The following entities are exempt from licensure under this Chapter:

1. community mental health centers;
2. hospitals;
3. nursing homes;

4. psychiatric rehabilitative treatment facilities;
5. school-based health centers;
6. therapeutic group homes;
7. HCBS agencies;
8. substance abuse/addictive disorder facilities;
9. mental health clinics;
10. center-based respites;
11. MHEREs;
12. individuals certified by OBH to provide crisis intervention services; and
13. federally-owned facilities.

D. A CRC license is not required for individual or group practice of LMHPs providing services under the auspices of their individual license(s).

E. A CRC license shall:

1. be issued only to the person or entity named in the license application;
2. be valid only for the CRC to which it is issued and only for the geographic address of that CRC approved by DHH;
3. be valid for up to one year from the date of issuance, unless revoked, suspended, or modified prior to that date, or unless a provisional license is issued;
4. expire on the expiration date listed on the license, unless timely renewed by the CRC;
5. be invalid if sold, assigned, donated or transferred, whether voluntary or involuntary; and
6. be posted in a conspicuous place on the licensed premises at all times.

F. In order for the CRC to be considered operational and retain licensed status, the following applicable operational requirements shall be met. The CRC shall:

1. be open and operating 24 hours per day, 7 days per week;
2. have the required staff on duty at all times to meet the needs of the clients; and
3. be able to screen and either admit or refer all potential clients at all times.

G. The licensed CRC shall abide by any state and federal law, rule, policy, procedure, manual or memorandum pertaining to crisis receiving centers.

H. The CRC shall permit designated representatives of the department, in the performance of their duties, to:

1. inspect all areas of the center's operations; and
2. conduct interviews with any staff member, client, or other person as necessary.

I. CRC Names

1. A CRC is prohibited from using:
 - a. the same name as another CRC;
 - b. a name that resembles the name of another center;
 - c. a name that may mislead the client or public into believing it is owned, endorsed, or operated by the state of Louisiana when it is not owned, endorsed, or operated by the state of Louisiana.

J. Plan Review

1. Any entity that intends to operate as a CRC, except one that is converting from a MHERE or an existing CRC, shall complete the plan review process and obtain approval for its construction documents for the following types of projects:

- a. new construction;
- b. any entity that intends to operate and be licensed as a CRC in a physical environment that is not currently licensed as a CRC; or
- c. major alterations.

2. The CRC shall submit one complete set of construction documents with an application and review fee to the OSFM for review. Plan review submittal to the OSFM shall be in accordance with R.S. 40:1574, and the current *Louisiana Administrative Code* (LAC) provisions governing fire protection for buildings (LAC 55:V.Chapter 3 as of this promulgation), and the following criteria:

- a. any change in the type of license shall require review for requirements applicable at the time of licensing change;
- b. requirements applicable to occupancies, as defined by the most recently state-adopted edition of *National Fire Protection Association (NFPA) 101*, where services or treatment for four or more patients are provided;
- c. requirements applicable to construction of business occupancies, as defined by the most recently state-adopted edition of NFPA 101; and
- d. the specific requirements outlined in the Physical Environment requirements of this Chapter.

3. Construction Document Preparation

a. The CRC's construction documents shall be prepared by a Louisiana licensed architect or licensed engineer as governed by the licensing laws of the state for the type of work to be performed.

b. The CRC's construction documents shall be of an architectural or engineering nature and thoroughly illustrate an accurately drawn and dimensioned project that contains noted plans, details, schedules and specifications.

c. The CRC shall submit at least the following in the plan review process:

- i. site plans;
- ii. floor plan(s). These shall include architectural, mechanical, plumbing, electrical, fire protection, and if required by code, sprinkler and fire alarm plans;
- iii. building elevations;
- iv. room finish, door, and window schedules;
- v. details pertaining to Americans with Disabilities Act (ADA) requirements; and
- vi. specifications for materials.

4. Upon OSFM approval, the CRC shall submit the following to DHH:

- a. the final construction documents approved by OSFM; and
- b. OSFM's approval letter.

K. Waivers

1. The secretary of DHH may, within his/her sole discretion, grant waivers to building and construction guidelines which are not part of or otherwise required under the provisions of the state Sanitary Code.

2. In order to request a waiver, the CRC shall submit a written request to HSS that demonstrates:

- a. how patient safety and quality of care offered is not comprised by the waiver;
- b. the undue hardship imposed on the center if the waiver is not granted; and

c. the center's ability to completely fulfill all other requirements of service.

3. DHH will make a written determination of each waiver request.

4. Waivers are not transferable in an ownership change or geographic change of location, and are subject to review or revocation upon any change in circumstances related to the waiver.

5. DHH prohibits waivers for new construction.

L. A person or entity convicted of a felony or that has entered a guilty plea or a plea of nolo contendere to a felony is prohibited from being the CRC or owner, clinical supervisor or any managing employee of a CRC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5311. Initial Licensure Application Process

A. Any entity, organization or person interested in operating a crisis receiving center must submit a completed initial license application packet to the department for approval. Initial CRC licensure application packets are available from HSS.

B. A person/entity/organization applying for an initial license must submit a completed initial licensing application packet which shall include:

1. a completed CRC licensure application;
2. the nonrefundable licensing fee as established by statute;
3. the approval letter of the architectural center plans for the CRC from OSFM, if the center must go through plan review;
4. the on-site inspection report with approval for occupancy by the OSFM, if applicable;
5. the health inspection report with approval of occupancy from the Office of Public Health (OPH);
6. a statewide criminal background check, including sex offender registry status, on all owners and managing employees;
7. except for governmental entities or organizations, proof of financial viability, comprised of the following:
 - a. a line of credit issued from a federally insured, licensed lending institution in the amount of at least \$100,000;
 - b. general and professional liability insurance of at least \$500,000; and
 - c. worker's compensation insurance;
8. an organizational chart and names, including position titles, of key administrative personnel and the governing body;
9. a legible floor sketch or drawing of the premises to be licensed;
10. a letter of intent indicating whether the center will serve minors or adults and the center's maximum number of beds;
11. if operated by a corporate entity, such as a corporation or an limited liability corporation (LLC), current proof of registration and status with the Louisiana Secretary of State's Office;
12. a letter of recommendation from the OBH regional office or its designee; and
13. any other documentation or information required by the department for licensure.

C. If the initial licensing packet is incomplete, the applicant shall:

1. be notified of the missing information; and
2. be given 90 days from receipt of the notification to submit the additional requested information or the application will be closed.

D. Once the initial licensing application is approved by DHH, notification of such approval shall be forwarded to the applicant.

E. The applicant shall notify DHH of initial licensing survey readiness within the required 90 days of receipt of application approval. If an applicant fails to notify DHH of initial licensing survey readiness within 90 days, the application will be closed.

F. If an initial licensing application is closed, an applicant who is still interested in operating a CRC must submit a:

1. new initial licensing packet; and
2. non-refundable licensing fee.

G. Applicants must be in compliance with all appropriate federal, state, departmental or local statutes, laws, ordinances, rules, regulations and fees before the CRC will be issued an initial license to operate.

H. An entity that intends to become a CRC is prohibited from providing crisis receiving services to clients during the initial application process and prior to obtaining a license, unless it qualifies as one of the following facilities:

1. a hospital-based CRC;
2. an MHERE;
3. an MHERE that has communicated its intent to become licensed as a CRC in collaboration with the department prior to February 28, 2013; or
4. a center-based respite.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5313. Initial Licensing Surveys

A. Prior to the initial license being issued, an initial licensing survey shall be conducted on-site to ensure compliance with the licensing laws and standards.

B. If the initial licensing survey finds that the center is compliant with all licensing laws, regulations and other required statutes, laws, ordinances, rules, regulations, and fees, the department shall issue a full license to the center.

C. In the event that the initial licensing survey finds that the center is noncompliant with any licensing laws or regulations, or any other required rules or regulations, that present a potential threat to the health, safety, or welfare of the clients, the department shall deny the initial license.

D. In the event that the initial licensing survey finds that the center is noncompliant with any licensing laws or regulations, or any other required rules or regulations, and the department determines that the noncompliance does not present a threat to the health, safety or welfare of the clients, the department:

1. may issue a provisional initial license for a period not to exceed six months; and
2. shall require the center to submit an acceptable plan of correction.
 - a. The department may conduct a follow-up survey following the initial licensing survey after receipt of an acceptable plan of correction to ensure correction of the

deficiencies. If all deficiencies are corrected on the follow-up survey, a full license will be issued.

b. If the center fails to correct the deficiencies, the initial license may be denied.

E. The initial licensing survey of a CRC shall be an announced survey. Follow-up surveys to the initial licensing surveys are unannounced surveys.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5315. Types of Licenses

A. The department has the authority to issue the following types of licenses.

1. Initial License

a. The department shall issue a full license to the CRC when the initial licensing survey indicates the center is compliant with:

- i. all licensing laws and regulations;
- ii. all other required statutes, laws, ordinances, rules, regulations; and
- iii. fees.

b. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, or suspended.

2. Provisional Initial License

a. The department may issue a provisional initial license to the CRC when the initial licensing survey finds that the CRC is noncompliant with any licensing laws or regulations or any other required statutes, laws, ordinances, rules, regulations or fees, but the department determines that the noncompliance does not present a threat to the health, safety or welfare of the clients.

i. The center shall submit a plan of correction to the department for approval, and the center shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license.

ii. If all such noncompliance or deficiencies are corrected on the follow-up survey, a full license will be issued.

iii. If all such noncompliance or deficiencies are not corrected on the follow-up survey, or new deficiencies affecting the health, safety or welfare of a client are cited, the provisional license will expire and the center shall be required to begin the initial licensing process again by submitting a new initial license application packet and the appropriate licensing fee.

3. Renewal License. The department may issue a renewal license to a licensed CRC that is in substantial compliance with all applicable federal, state, departmental, and local statutes, laws, ordinances, rules, regulations and fees. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended, or terminated.

4. Provisional License. The department may issue a provisional license to a licensed CRC for a period not to exceed six months.

a. A provisional license may be issued for the following reasons:

- i. more than five deficiencies cited during any one survey;
- ii. four or more validated complaints in a consecutive 12-month period;

iii. a deficiency resulting from placing a client at risk for serious harm or death;

iv. failure to correct deficiencies within 60 days of notification of such deficiencies, or at the time of a follow-up survey; or

v. failure to be in substantial compliance with all applicable federal, state, departmental and local statutes, laws, ordinances, rules regulations and fees at the time of renewal of the license.

b. The department may extend the provisional license for an additional period not to exceed 90 days in order for the center to correct the deficiencies.

c. The center shall submit an acceptable plan of correction to DHH and correct all noncompliance or deficiencies prior to the expiration of the provisional license.

d. The department shall conduct a follow-up survey of the CRC, either on-site or by administrative review, prior to the expiration of the provisional license.

e. If the follow-up survey determines that the CRC has corrected the deficiencies and has maintained compliance during the period of the provisional license, the department may issue a license that will expire on the expiration date of the most recent renewal or initial license.

f. The provisional license shall expire if:

- i. the center fails to correct the deficiencies by the follow-up survey; or
- ii. the center is cited with new deficiencies at the follow-up survey indicating a risk to the health, safety, or welfare of a client.

g. If the provisional license expires, the center shall be required to begin the initial licensing process by submitting a:

- i. new initial license application packet; and
- ii. non-refundable fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5317. Changes in Licensee Information or Personnel

A. Within five days of the occurrence, the CRC shall report in writing to HSS the following changes to the:

1. CRC's entity name;
2. business name;
3. mailing address; or
4. telephone number;

B. Any change to the CRC's name or "doing business as" name requires a \$25 nonrefundable fee for the issuance of an amended license with the new name.

C. A CRC shall report any change in the CRC's key administrative personnel within five days of the change.

1. Key administrative personnel include the:
 - a. CRC manager;
 - b. clinical director; and
 - c. nurse manager.
2. The CRC's notice to the department shall include the incoming individual's:
 - a. name;
 - b. date of appointment to the position; and
 - c. qualifications.

D. Change of Ownership (CHOW)

1. A CRC shall report a CHOW in writing to the department at least five days prior to the change. Within five days following the change, the new owner shall submit:

- a. the legal CHOW document;
 - b. all documents required for a new license; and
 - c. the applicable nonrefundable licensing fee.
2. A CRC that is under license revocation or denial or license renewal may not undergo a CHOW.

3. Once all application requirements are completed and approved by the department, a new license shall be issued to the new owner.

E. Change in Physical Address

1. A CRC that intends to change the physical address of its geographic location shall submit:

- a. a written notice to HSS of its intent to relocate;
- b. a plan review request;
- c. a new license application;
- d. a nonrefundable license fee; and
- e. any other information satisfying applicable licensing requirements.

2. In order to receive approval for the change of physical address, the CRC must:

- a. have a plan review approval;
- b. have approval from OSFM and OPH;
- c. have an approved license application packet;
- d. be in compliance with other applicable licensing requirements; and
- e. have an on-site licensing survey prior to relocation of the center.

3. Upon approval of the requirements for a change in physical address, the department shall issue a new license to the CRC.

F. Any request for a duplicate license shall be accompanied by a \$25 fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5319. Renewal of License

A. A CRC license expires on the expiration date listed on the license, unless timely renewed by the CRC.

B. To renew a license, the CRC shall submit a completed license renewal application packet to the department at least 30 days prior to the expiration of the current license. The license renewal application packet includes:

- 1. the license renewal application;
- 2. a current state fire marshal report;
- 3. a current OPH inspection report;
- 4. the nonrefundable license renewal fee;
- 5. any other documentation required by the department; and

6. except for governmental entities or organizations, proof of financial viability, comprised of the following:

- a. a line of credit issued from a federally insured, licensed lending institution in the amount of at least \$100,000;
- b. general and professional liability insurance of at least \$500,000; and
- c. worker's compensation insurance.

C. The department may perform an on-site survey and inspection of the center upon renewal.

D. Failure to submit a completed license renewal application packet prior to the expiration of the current license will result in the voluntary nonrenewal of the CRC license upon the license's expiration.

E. The renewal of a license does not in any manner affect any sanction, civil monetary penalty, or other action imposed by the department against the center.

F. If a licensed CRC has been issued a notice of license revocation or suspension, and the center's license is due for annual renewal, the department shall deny the license renewal application and shall not issue a renewal license.

G. Voluntary Nonrenewal of a License

1. If a center fails to timely renew its license, the license:

- a. expires on the license's expiration date; and
- b. is considered a nonrenewal and voluntarily surrendered.

2. There is no right to an administrative reconsideration or appeal from a voluntary surrender or nonrenewal of the license.

3. If a center fails to timely renew its license, the center shall immediately cease providing services, unless the center is actively treating clients, in which case the center shall:

- a. within two days of the untimely renewal, provide written notice to HSS of the number of clients receiving treatment at the center;
- b. within two days of the untimely renewal, provide written notice to each active client's prescribing physician and to every client, or, if applicable, the client's parent or legal guardian, of the following:
 - i. voluntary nonrenewal of license;
 - ii. date of closure; and
 - iii. plans for the transition of the client;
- c. discharge and transition each client in accordance with this Chapter within 15 days of the license's expiration date; and

- d. notify HSS of the location where records will be stored and the name, address, and phone number of the person responsible for the records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5321. Licensing Surveys

A. The department may conduct periodic licensing surveys and other surveys as deemed necessary to ensure compliance with all laws, rules and regulations governing crisis receiving centers and to ensure client health, safety and welfare. These surveys may be conducted on-site or by administrative review and shall be unannounced.

B. If deficiencies are cited, the department may require the center to submit an acceptable plan of correction.

C. The department may conduct a follow-up survey following any survey in which deficiencies were cited to ensure correction of the deficiencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5323. Complaint Surveys

A. Pursuant to R.S. 40:2009.13 et seq., the department has the authority to conduct unannounced complaint surveys on crisis receiving centers.

B. The department shall issue a statement of deficiency to the center if it finds a deficiency during the complaint survey.

C. Plan of Correction

1. Once the department issues a statement of deficiencies, the department may require the center to submit an acceptable plan of correction.

2. If the department determines that other action, such as license revocation, is appropriate, the center:

- a. may not be required to submit a plan of correction, and
- b. will be notified of such action.

D. Follow-up Surveys

1. The department may conduct a follow-up survey following a complaint survey in which deficiencies were cited to ensure correction of the deficient practices.

2. If the department determines that other action, such as license revocation, is appropriate:

- a. a follow-up survey is not necessary; and
- b. the center will be notified of such action.

E. Informal Reconsiderations of Complaint Surveys

1. A center that is cited with deficiencies found during a complaint survey has the right to request an informal reconsideration of the deficiencies. The center's written request for an informal reconsideration must be received by HSS within 10 calendar days of the center's receipt of the statement of deficiencies.

2. An informal reconsideration for a complaint survey or investigation shall be conducted by the department as a desk review.

3. Correction of the violation or deficiency shall not be the basis for the reconsideration.

4. The center shall be notified in writing of the results of the informal reconsideration.

5. Except for the right to an administrative appeal provided in R.S. 40:2009.16, the informal reconsideration shall constitute final action by the department regarding the complaint survey, and there shall be no further right to an administrative appeal.

F. Administrative Appeals

1. To request an administrative appeal, the Division of Administrative Law must receive the center's written request for an appeal within 30 calendar days of the receipt of the results of the administrative reconsideration.

2. The administrative law judge is:

- a. limited to determining whether the survey was conducted properly or improperly; and
- b. precluded from overturning, deleting, amending or adding deficiencies or violations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5325. Statement of Deficiencies

A. The CRC shall make any statement of deficiencies available to the public upon request after the center submits a plan of correction that is accepted by the department or 90 days after the statement of deficiencies is issued to the center, whichever occurs first.

B. Informal Reconsiderations.

1. Unless otherwise provided in statute or in this Chapter, a CRC has the right to an informal reconsideration of any deficiencies cited as a result of a survey.

2. Correction of the violation, noncompliance or deficiency shall not be the basis for the reconsideration.

3. The center's written request for informal reconsideration must be received by HSS within 10 days of the center's receipt of the statement of deficiencies.

4. If a timely request for an informal reconsideration is received, the department shall schedule and conduct the administrative reconsideration.

5. HSS shall notify the center in writing of the results of the informal reconsideration.

6. Except as provided pursuant to R.S. 40:2009.13 et seq., and as provided in this Chapter:

- a. the informal reconsideration decision is the final administrative decision regarding the deficiencies; and
- b. there is no right to an administrative appeal of such deficiencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5327. Cessation of Business

A. A CRC that intends to cease operations shall:

1. provide 30 days advance written notice to HSS and the active client, or if applicable, the client's parent(s), legal guardian, or designated representative;

2. discharge and transition all clients in accordance with this Chapter; and

3. provide 30 days advance written notice to DHH and the clients of the location where the records will be stored, including the name, address and phone number of the person responsible for the records.

B. A CRC that ceases operations as a result of a final revocation, denial or suspension shall notify HSS within 10 days of closure of the location where the records will be stored and the name, address and phone number of the person responsible for the records.

C. If a CRC fails to follow these procedures, the department may prohibit the owners, managers, officers, directors, and/or administrators from opening, managing, directing, operating, or owning a CRC for a period of two years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5329. Sanctions

A. The department may issue sanctions for deficiencies and violations of law, rules and regulations that include:

- 1. civil fines;
- 2. directed plans of correction; and
- 3. license revocation or denial of license renewal.

B. The department may deny an application for an initial license or a license renewal, or may revoke a license in accordance with the Administrative Procedure Act.

C. The department may deny an initial license, revoke a license or deny a license renewal for any of the following reasons, including but not limited to:

- 1. failure to be in compliance with the CRC licensing laws, rules and regulations;
- 2. failure to be in compliance with other required statutes, laws, ordinances, rules or regulations;

3. failure to comply with the terms and provisions of a settlement agreement or education letter;
4. cruelty or indifference to the welfare of the clients;
5. misappropriation or conversion of the property of the clients;
6. permitting, aiding or abetting the unlawful, illicit or unauthorized use of drugs or alcohol within the center of a program;
7. documented information of past or present conduct or practices of an employee or other staff which are detrimental to the welfare of the clients, including but not limited to:
 - a. illegal activities; or
 - b. coercion or falsification of records;
8. failure to protect a client from a harmful act of an employee or other client including, but not limited to:
 - a. mental or physical abuse, neglect, exploitation or extortion;
 - b. any action posing a threat to a client's health and safety;
 - c. coercion;
 - d. threat or intimidation;
 - e. harassment; or
 - f. criminal activity;
9. failure to notify the proper authorities, as required by federal or state law or regulations, of all suspected cases of the acts outlined in subsection D.8 above;
10. knowingly making a false statement in any of the following areas, including but not limited to:
 - a. application for initial license or renewal of license;
 - b. data forms;
 - c. clinical records, client records or center records;
 - d. matters under investigation by the department or the Office of the Attorney General; or
 - e. information submitted for reimbursement from any payment source;
11. knowingly making a false statement or providing false, forged or altered information or documentation to DHH employees or to law enforcement agencies;
12. the use of false, fraudulent or misleading advertising; or
13. the CRC, an owner, officer, member, manager, administrator, Medical Director, managing employee, or clinical supervisor has pled guilty or nolo contendere to a felony, or is convicted of a felony, as documented by a certified copy of the record of the court;
14. failure to comply with all reporting requirements in a timely manner, as required by the department;
15. failure to allow or refusal to allow the department to conduct an investigation or survey or to interview center staff or clients;
16. interference with the survey process, including but not limited to, harassment, intimidation, or threats against the survey staff;
17. failure to allow or refusal to allow access to center or client records by authorized departmental personnel;
18. bribery, harassment, intimidation or solicitation of any client designed to cause that client to use or retain the services of any particular CRC;
19. cessation of business or nonoperational status;

20. failure to repay an identified overpayment to the department or failure to enter into a payment agreement to repay such overpayment;

21. failure to timely pay outstanding fees, fines, sanctions or other debts owed to the department; or

22. failure to uphold client rights that may have resulted or may result in harm, injury or death of a client.

D. If the department determines that the health and safety of a client or the community may be at risk, the imposition of the license revocation or license nonrenewal may be immediate and may be enforced during the pendency of the administrative appeal. The department will provide written notification to the center if the imposition of the action will be immediate.

E. Any owner, officer, member, manager, director or administrator of such CRC is prohibited from owning, managing, directing or operating another CRC for a period of two years from the date of the final disposition of any of the following:

1. license revocation;
2. denial of license renewal, except when due to cessation of business; or
3. the license is surrendered in lieu of adverse action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5331. Notice and Appeal of License Denial, License Revocation and Denial of License Renewal

A. The department shall provide written notice to the CRC of the following:

1. license denial;
2. license revocation; or
3. license nonrenewal or denial of license renewal.

B. The CRC has the right to an administrative reconsideration of the license denial, license revocation or license nonrenewal.

1. If the CRC chooses to request an administrative reconsideration, the request must:

- a. be in writing addressed to HSS;
- b. be received by HSS within 10 days of the center's receipt of the notice of the license denial, license revocation or license nonrenewal; and
- c. include any documentation that demonstrates that the determination was made in error.

2. If a timely request for an administrative reconsideration is received, HSS shall provide the center with written notification of the date of the administrative reconsideration.

3. The center may appear in person at the administrative reconsideration and may be represented by counsel.

4. HSS shall not consider correction of a deficiency or violation as a basis for the reconsideration.

5. The center will be notified in writing of the results of the administrative reconsideration.

C. The administrative reconsideration process is not in lieu of the administrative appeals process.

D. The CRC has a right to an administrative appeal of the license denial, license revocation or license nonrenewal.

1. If the CRC chooses to request an administrative appeal, the request must:

- a. be received by the DAL within 30 days of:
 - i. the receipt of the results of the administrative reconsideration; or
 - ii. the receipt of the notice of the license denial, revocation or nonrenewal, if the CRC chose to forego its rights to an administrative reconsideration;
- b. be in writing;
- c. include any documentation that demonstrates that the determination was made in error; and
- d. include the basis and specific reasons for the appeal.

2. The DAL shall not consider correction of a violation or a deficiency as a basis for the administrative appeal.

E. Administrative Appeals of License Revocations and License Non-renewals

1. If a timely request for an administrative appeal is received by the DAL, the center will be allowed to continue to operate and provide services until the DAL issues a final administrative decision.

F. Administrative Appeals of Immediate License Revocations or License Non-renewals

1. If DHH imposes an immediate license revocation or license nonrenewal, DHH may enforce the revocation or nonrenewal during the appeal process.

2. If DHH chooses to enforce the revocation or nonrenewal during the appeal process, the center will not be allowed to operate and/or provide services during the appeal process.

G. If a licensed CRC has a pending license revocation, and the center's license is due for annual renewal, the department shall deny the license renewal application. The denial of the license renewal application does not affect, in any manner, the license revocation.

H. Administrative Hearings of License Denials, Non-renewals and Revocations

1. If a timely administrative appeal is submitted by the center, the DAL shall conduct the hearing within 90 days of the docketing of the administrative appeal. The DAL may grant one extension, not to exceed 90 days, if good cause is shown.

2. If the final DAL decision is to reverse the license denial, license nonrenewal or license revocation, the center's license will be reinstated upon the payment of any outstanding fees or sanctions fees due to the department.

3. If the final DAL decision is to affirm the license nonrenewal or license revocation, the center shall:

- a. discharge and transition any and all clients receiving services according to the provisions of this Chapter; and
- b. comply with the requirements governing cessation of business in this Chapter.

I. There is no right to an administrative reconsideration or an administrative appeal of the issuance of a provisional initial license to a new CRC, or the issuance of a provisional license to a licensed CRC.

J. Administrative Reconsiderations and Administrative Appeals of the Expiration of a Provisional Initial License or Provisional License

1. A CRC with a provisional initial license, or a provisional license that expires due to deficiencies cited at the follow-up survey, has the right to request an

administrative reconsideration and/or an administrative appeal.

2. The center's request for an administrative reconsideration must:

- a. be in writing;
- b. be received by the HSS within five days of receipt of the notice of the results of the follow-up survey from the department; and
- c. include the basis and specific reasons for the administrative reconsideration.

3. Correction of a violation or deficiency after the follow-up survey will not be considered as the basis for the administrative reconsideration or for the administrative appeal.

4. The issue to be decided in the administrative reconsideration and the administrative appeal is whether the deficiencies were properly cited at the follow-up survey.

5. The CRC's request for an administrative appeal must:

- a. be in writing;
- b. be submitted to the DAL within 15 days of receipt of the notice of the results of the follow-up survey from the department; and
- c. include the basis and specific reasons for the appeal.

6. A center with a provisional initial license or a provisional license that expires under the provisions of this Chapter shall cease providing services and discharge or transition clients unless the DAL or successor entity issues a stay of the expiration.

a. To request a stay, the center must submit its written application to the DAL at the time the administrative appeal is filed.

b. The DAL shall hold a contradictory hearing on the stay application. If the center shows that there is no potential harm to the center's clients, then the DAL shall grant the stay.

7. Administrative Hearing

a. If the CRC submits a timely request for an administrative hearing, the DAL shall conduct the hearing within 90 days of docketing the administrative appeal. The DAL may grant one extension, not to exceed 90 days, if good cause is shown.

b. If the final DAL decision is to remove all deficiencies, the department will reinstate the center's license upon the payment of any outstanding fees and settlement of any outstanding sanctions due to the department.

c. If the final DAL decision is to uphold the deficiencies and affirm the expiration of the provisional license, the center shall discharge any and all clients receiving services in accordance with the provisions of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Subchapter C. Organization and Administration §5337. General Provisions

A. Purpose and Organizational Structure. The CRC shall develop and implement a statement maintained by the center that clearly defines the purpose of the CRC. The statement shall include:

1. the program philosophy;
2. the program goals and objectives;
3. the ages, sex and characteristics of clients accepted for care;
4. the geographical area served;
5. the types of services provided;
6. the admission criteria;
7. the needs, problems, situations or patterns addressed by the provider's program; and
8. an organizational chart of the provider which clearly delineates the lines of authority.

B. The CRC shall provide supervision and services that:

1. conform to the department's rules and regulations;
2. meet the needs of the client as identified and addressed in the client's treatment plan;
3. protect each client's rights; and
4. promote the social, physical and mental wellbeing of clients.

C. The CRC shall maintain any information or documentation related to compliance with this Chapter and shall make such information or documentation available to the department.

D. Required Reporting. The center shall report the following incidents in writing to HSS within 24 hours of discovery:

1. any disaster or emergency or other unexpected event that causes significant disruption to program operations;
2. any death or serious injury of a client:
 - a. that may potentially be related to program activities; or
 - b. who at the time of his/her death or serious injury was an active client of the center; and
3. allegations of client abuse, neglect and exploitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5339. Governing Body

A. A crisis receiving center shall have the following:

1. an identifiable governing body with responsibility for and authority over the policies and operations of the center;
2. documents identifying the governing body's:
 - a. members;
 - b. contact information for each member;
 - c. terms of membership;
 - d. officers; and
 - e. terms of office for each officer.

B. The governing body of a CRC shall:

1. be comprised of one or more persons;
2. hold formal meetings at least twice a year;
3. maintain written minutes of all formal meetings of the governing body; and
4. maintain bylaws specifying frequency of meetings and quorum requirements.

C. The responsibilities of a CRC's governing body include, but are not limited to:

1. ensuring the center's compliance with all federal, state, local and municipal laws and regulations as applicable;

2. maintaining funding and fiscal resources to ensure the provision of services and compliance with this Chapter;

3. reviewing and approving the center's annual budget;

4. designating qualified persons to act as CRC manager, clinical director and nurse manager, and delegating these persons the authority to manage the center;

5. at least once a year, formulating and reviewing, in consultation with the CRC manager, clinical director and nurse manager, written policies concerning:

- a. the provider's philosophy and goals;
- b. current services;
- c. personnel practices and job descriptions; and
- d. fiscal management;

6. evaluating the performances of the CRC manager, clinical director and nurse manager at least once a year;

7. meeting with designated representatives of the department whenever required to do so;

8. informing the department, or its designee, prior to initiating any substantial changes in the services provided by the center; and

9. ensuring statewide criminal background checks are conducted as required in this Chapter and state law.

D. A governing body shall ensure that the CRC maintains the following documents:

1. minutes of formal meetings and by-laws of the governing body;
2. documentation of the center's authority to operate under state law;
3. all leases, contracts and purchases-of-service agreements to which the center is a party;
4. insurance policies;
5. annual operating budgets;
6. a master list of all the community resources used by the center;
7. documentation of ownership of the center;
8. documentation of all accidents, incidents, abuse/neglect allegations; and
9. a daily census log of clients receiving services.

E. The governing body of a CRC shall ensure the following with regards to contract agreements to provide services for the center.

1. The agreement for services is in writing.
2. Every written agreement is reviewed at least once a year.
3. The deliverables are being provided as per the agreement.
4. The center retains full responsibility for all services provided by the agreement.
5. All services provided by the agreement shall:
 - a. meet the requirements of all laws, rules and regulations applicable to a CRC; and
 - b. be provided only by qualified providers and personnel in accordance with this Chapter.

6. If the agreement is for the provision of direct care services, the written agreement specifies the party responsible for screening, orientation, ongoing training and development of and supervision of the personnel providing services pursuant to the agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5341. Policies and Procedures

A. Each CRC shall develop, implement and comply with center-specific written policies and procedures governing all requirements of this Chapter, including the following areas:

1. protection of the health, safety, and wellbeing of each client;
2. providing treatment in order for clients to achieve optimal stabilization;
3. access to care that is medically necessary;
4. uniform screening for patient placement and quality assessment, diagnosis, evaluation, and referral to appropriate level of care;
5. operational capability and compliance;
6. delivery of services that are cost-effective and in conformity with current standards of practice;
7. confidentiality and security of client records and files;
8. prohibition of illegal or coercive inducement, solicitation and kickbacks;
9. client rights;
10. grievance process;
11. emergency preparedness;
12. abuse and neglect;
13. incidents and accidents, including medical emergencies;
14. universal precautions;
15. documentation of services;
16. admission, including descriptions of screening and assessment procedures;
17. transfer and discharge procedures;
18. behavior management;
19. infection control;
20. transportation;
21. quality assurance;
22. medical and nursing services;
23. emergency care;
24. photography and video of clients; and
25. contraband.

B. A center shall develop, implement and comply with written personnel policies in the following areas:

1. recruitment, screening, orientation, ongoing training, development, supervision and performance evaluation of staff including volunteers;
2. written job descriptions for each staff position, including volunteers;
3. conducting staff health assessments that are consistent with OPH guidelines and indicate whether, when and how staff have a health assessment;
4. an employee grievance procedure;
5. abuse reporting procedures that require:
 - a. staff to report any allegations of abuse or mistreatment of clients pursuant to state and federal law; and
 - b. staff to report any allegations of abuse, neglect, exploitation or misappropriation of a client to DHH;
6. a nondiscrimination policy;
7. a policy that requires all employees to report any signs or symptoms of a communicable disease or personal illness to their supervisor, CRC manager or clinical director as soon as possible to prevent the spread of disease or illness to other individuals;

8. procedures to ensure that only qualified personnel are providing care within the scope of the center's services;

9. policies governing staff conduct and procedures for reporting violations of laws, rules, and professional and ethical codes of conduct;

10. policies governing staff organization that pertain to the center's purpose, setting and location;

11. procedures to ensure that the staff's credentials are verified, legal and from accredited institutions; and

12. obtaining criminal background checks.

C. A CRC shall comply with all federal and state laws, rules and regulations in the implementation of its policies and procedures.

D. Center Rules

1. A CRC shall:

a. have a clearly written list of rules governing client conduct in the center;

b. provide a copy of the center's rules to all clients and, where appropriate, the client's parent(s) or legal guardian(s) upon admission; and

c. post the rules in an accessible location in the center.

E. The facility shall develop, implement and comply with policies and procedures that:

1. give consideration to the client's chronological and developmental age, diagnosis, and severity of illness when assigning a sleeping area or bedroom;

2. ensure that each client has his/her own bed; and

3. prohibit mobile homes from being used as client sleeping areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Subchapter D. Provider Operations

§5347. Client Records

A. The CRC shall ensure:

1. a single client record is maintained for each client according to current professional standards;

2. policies and procedures regarding confidentiality of records, maintenance, safeguarding and storage of records are developed, implemented and followed;

3. safeguards are in place to prevent unauthorized access, loss, and destruction of client records;

4. when electronic health records are used, the most up to date technologies and practices are used to prevent unauthorized access;

5. records are kept confidential according to federal and state laws and regulations;

6. records are maintained at the center where the client is currently active and for six months after discharge;

7. six months post-discharge, records may be transferred to a centralized location for maintenance;

8. client records are directly and readily accessible to the clinical staff caring for the client;

9. a system of identification and filing is maintained to facilitate the prompt location of the client's record;

10. all record entries are dated, legible and authenticated by the staff person providing the treatment, as appropriate to the media;

11. records are disposed of in a manner that protects client confidentiality;

12. a procedure for modifying a client record in accordance with accepted standards of practice is developed, implemented and followed;

13. an employee is designated as responsible for the client records;

14. disclosures are made in accordance with applicable state and federal laws and regulations; and

15. client records are maintained at least 6 years from discharge.

B. Record Contents. The center shall ensure that client records, at a minimum, contain the following:

1. the treatment provided to the client;

2. the client's response to the treatment;

3. other information, including:

- a. all screenings and assessments;
- b. provisional diagnoses;
- c. referral information;
- d. client information/data such as name, race, sex, birth date, address, telephone number, social security number, school/employer, and next of kin/emergency contact;

- e. documentation of incidents that occurred;
- f. attendance/participation in services/activities;
- g. treatment plan that includes the initial treatment plan plus any updates or revisions;

- h. lab work (diagnostic laboratory and other pertinent information, when indicated);

- i. documentation of the services received prior to admission to the CRC as available;

- j. consent forms;
- k. physicians' orders;

- l. records of all medicines administered, including medication types, dosages, frequency of administration, the individual who administered each dose and response to medication given on an as needed basis;

- m. discharge summary;
- n. other pertinent information related to client as appropriate; and

4. legible progress notes that are documented in accordance with professional standards of practice and:

- a. document implementation of the treatment plan and results;

- b. document the client's level of participation; and

- c. are completed upon delivery of services by the direct care staff to document progress toward stated treatment plan goals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5349. Client Funds and Possessions

A. The CRC shall:

1. maintain and safeguard all possessions, including money, brought to the center by clients;

2. maintain an inventory of each client's possessions from the date of admission; and

3. return all possessions to the client upon the client's discharge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5351. Quality Improvement Plan

A. A CRC shall have a quality improvement (QI) plan that:

1. assures that the overall function of the center is in compliance with federal, state, and local laws;

2. is meeting the needs of the citizens of the area;

3. is attaining the goals and objectives established in the center's mission statement;

4. maintains systems to effectively identify issues that require quality monitoring, remediation and improvement activities;

5. improves individual outcomes and individual satisfaction;

6. includes plans of action to correct identified issues that:

- a. monitor the effects of implemented changes; and

- b. result in revisions to the action plan.

7. is updated on an ongoing basis to reflect changes, corrections and other modifications.

B. The QI plan shall include:

1. a sample review of client case records on a quarterly basis to ensure that:

- a. individual treatment plans are up to date;

- b. records are accurate, complete and current; and

- c. the treatment plans have been developed and implemented as ordered;

2. a process for identifying on a quarterly basis the risk factors that affect or may affect the health, safety and/or welfare of the clients that includes, but is not limited to:

- a. review and resolution of grievances;

- b. incidents resulting in harm to client or elopement;

- c. allegations of abuse, neglect and exploitation; and

- d. seclusion and restraint.

3. a process to correct problems identified and track improvements; and

4. a process of improvement to identify or trigger further opportunities for improvement.

C. The QI plan shall establish and implement an internal evaluation procedure to:

1. collect necessary data to formulate a plan; and

2. hold quarterly staff committee meetings comprised of at least three staff members, one of whom is the CRC manager, nurse manager or clinical director, who evaluate the QI process and activities on an ongoing basis.

D. The CRC shall maintain documentation of the most recent 12 months of the QI activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254

and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health

and Hospitals, Bureau of Health Services Financing, LR 39:

Subchapter E. Personnel

§5357. General Requirements

A. The CRC shall maintain an organized professional staff who is accountable to the governing body for the overall responsibility of:

1. the quality of all clinical care provided to clients;

2. the ethical conduct and professional practices of its members;

3. compliance with policies and procedures approved by the governing body; and

4. the documented staff organization that pertains to the center's setting and location.

B. The direct care staff of a CRC shall:

1. have the appropriate qualifications to provide the services required by its clients' treatment plans; and

2. not practice beyond the scope of his/her license, certification or training.

C. The CRC shall ensure that:

1. qualified direct care staff members are present with the clients as necessary to ensure the health, safety and well-being of clients;

2. staff coverage is maintained in consideration of:

a. acuity of the clients being serviced;

b. the time of day;

c. the size, location, physical environment and nature of the center;

d. the ages and needs of the clients; and

e. ensuring the continual safety, protection, direct care and supervision of clients;

3. all direct care staff have current certification in cardiopulmonary resuscitation; and

4. applicable staffing requirements in this Chapter are maintained.

D. Criminal Background Checks

1. For any CRC that is treating minors, the center shall obtain a criminal background check on all staff. The background check must be conducted within 90 days prior to hire or employment in the manner required by RS 15:587.1.

2. For any CRC that is treating adults, the center shall obtain a statewide criminal background check on all unlicensed direct care staff by an agency authorized by the Office of State Police to conduct criminal background checks. The background check must be conducted within 90 days prior to hire or employment.

3. A CRC that hires a contractor to perform work which does not involve any contact with clients is not required to conduct a criminal background check on the contractor if accompanied at all times by a staff person when clients are present in the center.

E. The CRC shall review the Louisiana State Nurse Aide Registry and the Louisiana Direct Service Worker Registry to ensure that each unlicensed direct care staff member does not have a negative finding on either registry.

F. Prohibitions

1. The center providing services to minors is prohibited from knowingly employing or contracting with, or retaining the employment of or contract with, a person who supervises minors or provides direct care to minors who:

a. has entered a plea of guilty or nolo contendere, no contest, or has been convicted of a felony involving:

i. violence, abuse or neglect against a person;

ii. possession, sale, or distribution of illegal drugs;

iii. sexual misconduct and/or any crimes that requires the person to register pursuant to the Sex Offenders Registration Act;

iv. misappropriation of property belonging to another person; or

v. a crime of violence.

b. has a finding placed on the Louisiana State Nurse Aide Registry or the Louisiana Direct Service Worker Registry.

2. The center providing services to adults is prohibited from knowingly employing or contracting with, or retaining the employment of or contract with, a member of the direct care staff who:

a. has entered a plea of guilty or nolo contendere, no contest, or has been convicted of a felony involving:

i. abuse or neglect of a person;

ii. possession, sale, or distribution of a controlled dangerous substance

(a). within the last five years, or

(b). when the employee/contractor is under the supervision of the Louisiana Department of Public Safety and Corrections, the U.S. Department of Probation and Parole or the U.S. Department of Justice;

iii. sexual misconduct and/or any crimes that requires the person to register pursuant to the Sex Offenders Registration Act;

iv. misappropriation of property belonging to another person;

(a). within the last five years; or

(b). when the employee is under the supervision of the Louisiana Department of Public Safety and Corrections, the U.S. Department of Probation and Parole or the U.S. Department of Justice; or

v. a crime of violence.

b. has a finding placed on the Louisiana State Nurse Aide Registry or the Louisiana Direct Service Worker Registry.

G. Orientation and In-Service Training

1. All staff shall receive orientation prior to providing services and/or working in the center.

2. All direct care staff shall receive orientation, at least 40 hours of which is in crisis services and intervention training.

3. All direct care staff and other appropriate personnel shall receive in-service training at least once a year, at least twelve hours of which is in crisis services and intervention training.

4. All staff shall receive in-service training according to center policy at least once a year and as deemed necessary depending on the needs of the clients.

5. The content of the orientation and in-service training shall include the following:

a. confidentiality;

b. grievance process;

c. fire and disaster plans;

d. emergency medical procedures;

e. organizational structure and reporting relationships;

f. program philosophy;

g. personnel policies and procedures;

h. detecting and mandatory reporting of client abuse, neglect or misappropriation;

i. an overview of mental health and substance abuse, including an overview of behavioral health settings and levels of care;

- j. detecting signs of illness or dysfunction that warrant medical or nursing intervention;
- k. side effects and adverse reactions commonly caused by psychotropic medications;
- l. basic skills required to meet the health needs and challenges of the client;
- m. components of a crisis cycle;
- n. recognizing the signs of anxiety and escalating behavior;
- o. crisis intervention and the use of non-physical intervention skills, such as de-escalation, mediation conflict resolution, active listening and verbal and observational methods to prevent emergency safety situations;
- p. therapeutic communication;
- q. client's rights;
- r. duties and responsibilities of each employee;
- s. standards of conduct required by the center including professional boundaries;
- t. information on the disease process and expected behaviors of clients;
- u. levels of observation;
- v. maintaining a clean, healthy and safe environment and a safe and therapeutic milieu;
- w. infectious diseases and universal precautions;
- x. overview of the Louisiana licensing standards for crisis receiving centers;
- y. basic emergency care for accidents and emergencies until emergency medical personnel can arrive at center; and
- z. regulations, standards and policies related to seclusion and restraint, including the safe application of physical and mechanical restraints and physical assessment of the restrained client.

6. The in-services shall serve as a refresher for subjects covered in orientation.

7. The orientation and in-service training shall:

- a. be provided only by staff who are qualified by education, training, and experience;
- b. include training exercises in which direct care staff members successfully demonstrate in practice the techniques they have learned for managing the delivery of patient care services; and
- c. require the direct care staff member to demonstrate competency before providing services to clients.

I. Staff Evaluation

1. The center shall complete an annual performance evaluation of all employees.

2. The center's performance evaluation procedures for employees who provide direct care to clients shall address the quality and nature of the employee's relationships with clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5359. Personnel Qualifications and Responsibilities

A. A CRC shall have the following minimum staff:

- 1. a CRC manager who:
 - a. has a minimum of a master's degree in a human services field or is a licensed registered nurse;
 - b. has at least one year of qualifying experience in the field of behavioral health;

- c. is a full time employee; and
- d. has the following assigned responsibilities:
 - i. supervise and manage the day to day operation of the CRC;
 - ii. review reports of all accidents/incidents occurring on the premises and identify hazards to the clinical director;
 - iii. participate in the development of new programs and modifications;
 - iv. perform programmatic duties and/or make clinical decisions only within the scope of his/her licensure; and
 - v. shall not have other job responsibilities that impede the ability to maintain the administration and operation of the CRC;

2. a clinical director who is:

- a. a physician licensed in the state of Louisiana with expertise in managing psychiatric and medical conditions in accordance with the LSBME; or
- b. a psychiatric and mental health nurse practitioner who has an unrestricted license and prescriptive authority and a licensed physician on call at all times to be available for consultation;
- c. responsible for developing and implementing policies and procedures and oversees clinical services and treatment;
- d. on duty as needed and on call and available at all times;

3. a nurse manager who:

- a. holds a current unrestricted license as a registered nurse (RN) in the state of Louisiana;
- b. shall be a full time employee;
- c. has been a RN for a minimum of five years;
- d. has three years of qualifying experience providing direct care to patients with behavioral health diagnoses and at least one year qualifying experience providing direct care to medical/surgical inpatients;
- e. has the following responsibilities:

- i. develop and ensure implementation of nursing policies and procedures;
- ii. provide oversight of nursing staff and the services they provide;
- iii. ensure that any other job responsibilities will not impede the ability to provide oversight of nursing services;

4. authorized licensed prescriber who:

- a. shall be either:
 - i. a physician licensed in the state of Louisiana with expertise in managing psychiatric and medical conditions in accordance with the LSBME; or
 - ii. a psychiatric and mental health nurse practitioner who has an unrestricted license and prescriptive authority and a licensed physician on call at all times to be available for consultation;
- b. is on call at all times;
- c. is responsible for managing the psychiatric and medical care of the clients;

5. licensed mental health professionals (LMHPs):

- a. the center shall maintain a sufficient number of LMHPs to meet the needs of its clients;
- b. there shall be at least one LMHP on duty during hours of operation;

c. the LMHP shall have one year of qualifying experience in direct care to clients with behavioral health diagnoses and shall have the following responsibilities:

- i. provide direct care to clients and may serve as primary counselor to specified caseload;
- ii. serve as a resource person for other professionals and unlicensed personnel in their specific area of expertise;
- iii. attend and participate in individual care conferences, treatment planning activities, and discharge planning; and
- iv. function as the client's advocate in all treatment decisions;

6. nurses:

- a. the center shall maintain licensed nursing staff to meet the needs of its clients;
- b. all nurses shall have:
 - i. a current nursing license from the state of Louisiana;
 - ii. at least one year qualifying experience in providing direct care to clients with a behavioral health diagnosis; and
 - iii. at least one year qualifying experience providing direct care to medical/surgical inpatients;

c. the nursing staff has the following responsibilities:

- i. provide nursing services in accordance with accepted standards of practice, the CRC policies and the individual treatment plans of the clients;
- ii. supervise non-licensed clinical personnel;
- iii. each CRC shall have at least one RN on duty at the CRC during hours of operation; and
- iv. as part of orientation, all nurses shall receive 24 hours of education focusing on psychotropic medications, their side effects and possible adverse reactions. All nurses shall receive training in psychopharmacology for at least four hours per year.

B. Optional Staff

1. The CRC shall maintain non-licensed clinical staff as needed who shall:

- a. be at least 18 years of age;
- b. have a high school diploma or GED;
- c. provide services in accordance with CRC policies, documented education, training and experience, and the individual treatment plans of the clients; and
- d. be supervised by the nursing staff.

2. Volunteers

a. The CRC that utilizes volunteers shall ensure that each volunteer:

- i. meets the requirements of non-licensed clinical staff;
- ii. is screened and supervised to protect clients and staff;
- iii. is oriented to facility, job duties, and other pertinent information;
- iv. is trained to meet requirements of duties assigned;
- v. is given a written job description or written agreement;
- vi. is identified as a volunteer;

- vii. is trained in privacy measures; and
- viii. is required to sign a written confidentiality agreement.

b. The facility shall designate a volunteer coordinator who:

- i. has the experience and training to supervise the volunteers and their activities; and
- ii. is responsible for selecting, evaluating and supervising the volunteers and their activities.

3. If a CRC utilizes student interns, it shall ensure that each student intern:

- a. has current registration with the appropriate Louisiana board when required or educational institution, and is in good standing at all times;
- b. provides direct client care utilizing the standards developed by the professional board;
- c. provides care only under the direct supervision of an individual authorized in accordance with acceptable standards of practice; and
- d. provides only those services for which the student has been properly trained and deemed competent to perform.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5361. Personnel Records

A. A CRC shall maintain a personnel file for each employee and direct care staff member in the center. Each record shall contain:

1. the application for employment and/or resume, including contact information and employment history for the preceding five years, if applicable;
2. reference letters from former employer(s) and personal references or written documentation based on telephone contact with such references;
3. any required medical examinations or health screens;
4. evidence of current applicable professional credentials/certifications according to state law or regulations;
5. annual performance evaluations to include evidence of competency in performing assigned tasks;
6. personnel actions, other appropriate materials, reports and notes relating to the individual's employment;
7. the staff member's starting and termination dates;
8. proof of orientation, training and in-services;
9. results of criminal background checks, if required;
10. job descriptions and performance expectations;
11. a signed attestation annually by each member of the direct care staff indicating that he/she has not been convicted of or pled guilty or nolo contendere to a crime, other than traffic violations; and
12. written confidentiality agreement signed by the personnel every twelve months.

B. A CRC shall retain personnel files for at least three years following termination of employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Subchapter F. Admission, Transfer and Discharge

§5367. Admission Requirements

A. A CRC shall not refuse admission to any individual on the grounds of race, national origin, ethnicity or disability.

B. A CRC shall admit only those individuals whose needs, pursuant to the screening, can be fully met by the center.

C. A CRC shall expect to receive individuals who present voluntarily to the unit and/or individuals who are brought to the unit under an OPC, CEC, or PEC.

D. The CRC shall develop and implement policies and procedures for diverting individuals when the CRC is at capacity, that shall include:

1. notifying emergency medical services (EMS), police and the OBH or its designee in the service area;

2. conducting a screening on each individual that presents to the center; and

3. safely transferring the presenting individual to an appropriate provider;

E. Pre-Admission Requirements

1. Prior to admission, the center shall attempt to obtain documentation from the referring emergency room, agency, facility or other source, if available, that reflects the client's condition.

2. The CRC shall conduct a screening on each individual that presents for treatment that:

a. is performed by a RN who may be assisted by other personnel;

b. is conducted within 15 minutes of entering the center;

c. determines eligibility and appropriateness for admission;

d. assesses whether the client is an imminent danger to self or others; and

e. includes the following:

i. taking vital signs;

ii. breath analysis and urine drug screen

iii. brief medical history including assessment of risk for imminent withdrawal; and

iv. clinical assessment of current condition to determine primary medical problem(s) and appropriateness of admission to CRC or transfer to other medical provider.

F. Admission Requirements

1. The CRC shall establish the CRC's admission requirements that include:

a. availability of appropriate physical accommodations;

b. legal authority or voluntary admission; and

c. written documentation that client and/or family if applicable, consents to treatment.

2. The CRC shall develop, implement and comply with admission criteria that, at a minimum, include the following inclusionary and exclusionary requirements.

a. Inclusionary. The client is experiencing a seriously acute psychological/emotional change which results in a marked increase in personal distress and exceeds the abilities and resources of those involved to effectively resolve it.

b. Exclusionary. The client is experiencing an exacerbation of a chronic condition that does not meet the inclusionary criteria listed in §5367.F.2.a.

3. If the client qualifies for admission into the CRC, the center shall ensure that a behavioral health assessment is conducted:

a. by a LMHP;

b. within four hours of being received in the unit unless extenuating or emergency circumstances preclude the delivery of this service within this time frame; and

c. includes the following:

i. a history of previous emotional, behavioral and substance use problems and treatment;

ii. a social assessment to include a determination of the need for participation of family members or significant others in the individual's treatment; the social, peer-group, and environmental setting from which the person comes; family circumstances; current living situation; employment history; social, ethnic, cultural factors; and childhood history; current or pending legal issues including charges, pending trial, etc.;

iii. an assessment of the individual's ability and willingness to cooperate with treatment;

iv. an assessment for any possible abuse or neglect; and

v. review of any laboratory results, results of breath analysis and urine drug screens on patients and the need for further medical testing.

4. The CRC shall ensure that a nursing assessment is conducted that is:

a. begun at time of admission and completed within 24 hours; and

b. conducted by a RN with the assistance of other personnel.

5. The center shall ensure that a physical assessment is conducted by an authorized licensed prescriber within 12 hours of admission that includes:

a. a complete medical history;

b. direct physical examination; and

c. documentation of medical problems.

6. The authorized license prescriber, LMHP and/or RN shall conduct a review of the medical and psychiatric records of current and past diagnoses, laboratory results, treatments, medications and dose response, side-effects and compliance with:

a. the review of data reported to clinical director;

b. synthesis of data received is incorporated into treatment plan by clinical director.

G. Client/Family Orientation. Upon admission or as soon as possible, each facility shall ensure that a confidential and efficient orientation is provided to the client and the client's designated representative, if applicable, concerning:

1. visitation;

2. physical layout of the center;

3. safety;

4. center rules; and

5. all other pertinent information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5369. Discharge, Transfer and Referral Requirements

A. The CRC shall develop, implement and comply with policies and procedures that address when and how clients will be discharged and referred or transferred to other

providers in accordance with applicable state and federal laws and regulations.

B. Discharge planning shall begin upon admission.

C. The CRC shall ensure that a client is discharged:

1. when the client's treatment goals are achieved, as documented in the client's treatment plan;

2. when the client's issues or treatment needs are not consistent with the services the center is authorized or able to provide; or

3. according to the center's established written discharge criteria.

D. Discharge Plan. Each CRC client shall have a written discharge plan to provide continuity of services that includes:

1. the client's transfer or referral to outside resources, continuing care appointments, and crisis intervention assistance;

2. documented attempts to involve the client and the family or an alternate support system in the discharge planning process;

3. the client's goals or activities to sustain recovery;

4. signature of the client or, if applicable, the client's parent or guardian, with a copy provided to the individual who signed the plan;

5. name, dosage and frequency of client's medications ordered at the time of discharge;

6. prescriptions for medications ordered at time of discharge; and

7. the disposition of the client's possessions, funds and/or medications, if applicable.

E. The discharge summary shall be completed within 30 days and include:

1. the client's presenting needs and issues identified at the time of admission;

2. the services provided to the client;

3. the center's assessment of the client's progress towards goals;

4. the circumstances of discharge; and

5. the continuity of care recommended following discharge, supporting documentation and referral information.

F. Transfer Process. The CRC responsible for the discharge and transfer of the client shall:

1. request and receive approval from the receiving facility prior to transfer;

2. notify the receiving facility prior to the arrival of the client of any significant medical/psychiatric conditions/complications or any other pertinent information that will be needed to care for the client prior to arrival; and

3. transfer all requested client information and documents upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Subchapter G. Program Operations

§5375. Treatment Services

A. A CRC shall:

1. operate 24 hours per day seven days a week;

2. operate up to 16 licensed beds;

3. provide services to either adults or minors but not both;

4. provide services that include, but are not limited to:

a. emergency screening;

b. assessment;

c. crisis intervention and stabilization;

d. 24 hour observation;

e. medication administration; and

f. referral to the most appropriate and least restrictive setting available consistent with the client's needs.

B. A CRC shall admit clients for an estimated length of stay of 3-7 days. If a greater length of stay is needed, the CRC shall maintain documentation of clinical justification for the extended stay.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5377. Laboratory Services

A. The CRC shall have laboratory services available to meet the needs of its clients, including the ability to:

1. obtain STAT laboratory results as needed at all times;

2. conduct a dipstick urine drug screen; and

3. conduct a breath analysis for immediate determination of blood alcohol level.

B. The CRC shall maintain a CLIA certificate for the laboratory services provided on-site.

C. The CRC shall ensure that all contracted laboratory services are provided by a CLIA clinical laboratory improvement amendment (CLIA) certified laboratory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5379. Pharmaceutical Services and Medication Administration

A. The CRC may provide pharmaceutical services on-site at the center or off-site pursuant to a written agreement with a pharmaceutical provider.

B. All compounding, packaging, and dispensing of medications shall be accomplished in accordance with Louisiana law and Board of Pharmacy regulations and be performed by or under the direct supervision of a registered pharmacist currently licensed to practice in Louisiana.

C. The CRC shall ensure that a mechanism exists to:

1. provide pharmaceutical services 24 hours per day; and

2. obtain STAT medications, as needed, within an acceptable time frame, at all times.

D. CRCs that utilize off-site pharmaceutical providers pursuant to a written agreement shall have:

1. a physician who assumes the responsibility of procurement and possession of medications; and

2. an area for the secure storage of medication and medication preparation in accordance with Louisiana Board of Pharmacy rules and regulations.

E. A CRC shall maintain:

1. a site-specific Louisiana controlled substance license in accordance with the Louisiana Uniform Controlled Dangerous Substance Act; and

2. a United States Drug Enforcement Administration controlled substance registration for the facility in accordance with Title 21 of the United States Code.

F. The CRC shall develop, implement and comply with written policies and procedures that govern:

1. the safe administration and handling of all prescription and non-prescription medications;
 2. the storage, recording and control of all medications;
 3. the disposal of all discontinued and/or expired medications and containers with worn, illegible or missing labels;
 4. the use of prescription medications including:
 - a. when medication is administered, medical monitoring occurs to identify specific target symptoms;
 - b. a procedure to inform clients, staff, and where appropriate, client's parent(s), legal guardian(s) or designated representatives, of each medication's anticipated results, the potential benefits and side-effects as well as the potential adverse reaction that could result from not taking the medication as prescribed;
 - c. involving clients and, where appropriate, their parent(s) or legal guardian(s), and designated representatives in decisions concerning medication; and
 - d. staff training to ensure the recognition of the potential side effects of the medication.
 5. the list of abbreviations and symbols approved for use in the facility;
 6. recording of medication errors and adverse drug reactions and reporting them to the client's physician or authorized prescriber, and the nurse manager;
 7. the reporting of and steps to be taken to resolve discrepancies in inventory, misuse and abuse of controlled substances in accordance with federal and state law;
 8. provision for emergency pharmaceutical services;
 9. a unit dose system; and
 10. procuring and the acceptable timeframes for procuring STAT medications when the medication needed is not available on-site.
- C. The CRC shall ensure that:
1. medications are administered by licensed health care personnel whose scope of practice includes administration of medications;
 2. any medication is administered according to the order of an authorized licensed prescriber;
 3. it maintains a list of authorized licensed prescribers that is accessible to staff at all times.
 4. all medications are kept in a locked illuminated clean cabinet, closet or room at temperature controls according to the manufacturer's recommendations, accessible only to individuals authorized to administer medications;
 5. medications are administered only upon receipt of written orders, electromechanical facsimile, or verbal orders from an authorized licensed prescriber;
 6. all verbal orders are signed by the licensed prescriber within 72 hours;
 7. medications that require refrigeration are stored in a refrigerator or refrigeration unit separate from the refrigerators or refrigeration units that store food, beverages, or laboratory specimens;
 8. all prescription medication containers are labeled to identify:
 - a. the client's full name;
 - b. the name of the medication;
 - c. dosage;

- d. quantity and date dispensed;
- e. directions for taking the medication;
- f. required accessory and cautionary statements;
- g. prescriber's name; and
- h. the expiration date;

9. medication errors, adverse drug reactions, and interactions with other medications, food or beverages taken by the client are immediately reported to the client's physician or authorized licensed prescriber, supervising pharmacist and nurse manager with an entry in the client's record;

10. all controlled substances shall be kept in a locked cabinet or compartment separate from other medications;

11. current and accurate records are maintained on the receipt and disposition of controlled substances;

12. controlled substances are reconciled:

a. at least twice a day by staff authorized to administer controlled substances; or

b. by an automated system that provides reconciliation;

13. discrepancies in inventory of controlled substances are reported to the nurse manager and the supervising pharmacist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5381. Transportation

A. The CRC shall establish, implement and comply with policies and procedures to:

1. secure emergency transportation in the event of a client's medical emergency; and

2. provide non-emergent medical transportation to the clients as needed.

B. The facility shall have a written agreement with a transportation service in order to provide non-emergent transport services needed by its clients that shall require all vehicles used to transport CRC clients are:

1. maintained in a safe condition;

2. properly licensed and inspected in accordance with state law;

3. operated at a temperature that does not compromise the health, safety and needs of the client;

4. operated in conformity with all applicable motor vehicle laws

5. current liability coverage for all vehicles used to transport clients;

6. all drivers of vehicles that transport CRC clients are properly licensed to operate the class of vehicle in accordance with state law; and

7. the ability to transport non-ambulatory clients in appropriate vehicles if needed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5383. Food and Diet

A. The CRC shall ensure that:

1. all dietary services are provided under the direction of a Louisiana licensed and registered dietician either directly or by written agreement;

2. menus are approved by the registered dietician;

3. meals are of sufficient quantity and quality to meet the nutritional needs of clients, including religious and dietary restrictions;

4. meals are in accordance with Federal Drug Administration (FDA) dietary guidelines and the orders of the authorized licensed prescriber;

5. at least three meals plus an evening snack are provided daily with no more than 14 hours between any two meals;

6. meals are served in a manner that maintains the safety and security of the client and are free of identified contraband;

7. all food is stored, prepared, distributed, and served under safe and sanitary conditions;

8. all equipment and utensils used in the preparation and serving of food are properly cleaned, sanitized and stored; and

9. if meals are prepared on-site, they are prepared in an OPH approved kitchen.

B. The CRC may provide meal service and preparation pursuant to a written agreement with an outside food management company. If provided pursuant to a written agreement, the CRC shall:

1. maintain responsibility for ensuring compliance with this Chapter;

2. provide written notice to HSS and OPH within 10 calendar days of the effective date of the contract;

3. ensure that the outside food management company possesses a valid OPH retail food permit and meets all requirements for operating a retail food establishment that serves a highly susceptible population, in accordance with the special requirements for highly susceptible populations as promulgated in the Louisiana Sanitary Code provisions governing food display and service for retail food establishments (specifically LAC 51:XXIII.1911 as amended May 2007); and

4. ensure that the food management company employs or contracts with a licensed and registered dietician who serves the center as needed to ensure that the nutritional needs of the clients are met in accordance with the authorized licensed prescriber's orders and acceptable standards of practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Subchapter H. Client Rights

§5389. General Provisions

A. The CRC shall develop, implement and comply with policies and procedures that:

1. protect its clients' rights;

2. respond to questions and grievances pertaining to these rights;

3. ensure compliance with clients' rights enumerated in R.S. 28:171; and

4. ensure compliance with minors' rights enumerated in the *Louisiana Children's Code*.

B. A CRC's client and, if applicable, the client's parent(s) or legal guardian or chosen designated representative, have the following rights:

1. to be informed of the client's rights and responsibilities at the time of or shortly after admission;

2. to have a family member, chosen representative and/or his or her own physician notified of admission at the client's request to the CRC;

3. to receive treatment and medical services without discrimination based on race, age, religion, national origin, gender, sexual orientation, disability, marital status, diagnosis, ability to pay or source of payment;

4. to be free from abuse, neglect, exploitation and harassment;

5. to receive care in a safe setting;

6. to receive the services of a translator or interpreter, if applicable, to facilitate communication between the client and the staff;

7. to be informed of the client's own health status and to participate in the development, implementation and updating of the client's treatment plan;

8. to make informed decisions regarding the client's care in accordance with federal and state laws and regulations;

9. to consult freely and privately with the client's legal counsel or to contact an attorney at any reasonable time;

10. to be informed, in writing, of the policies and procedures for initiation, review and resolution of grievances or client complaints;

11. to submit complaints or grievances without fear of reprisal;

12. to have the client's information and medical records, including all computerized medical information, kept confidential in accordance with federal and state statutes and rules/regulations;

13. to be provided indoor and/or outdoor recreational and leisure opportunities;

14. to be given a copy of the center's rules and regulations upon admission or shortly thereafter;

15. to receive treatment in the least restrictive environment that meets the client's needs;

16. to be subject to the use of restraint and/or seclusion only in accordance with federal and state law, rules and regulations;

17. to be informed of all estimated charges and any limitations on the length of services at the time of admission or shortly thereafter;

18. to contact DHH at any reasonable time;

19. to obtain a copy of these rights as well as the address and phone number of DHH and the Mental Health Advocacy Service at any time; and

20. to be provided with personal hygiene products, including but not limited to, shampoo, deodorant, toothbrush, toothpaste, and soap, if needed.

C. A copy of the clients' right shall be posted in the facility and accessible to all clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5391. Grievances

A. The facility shall develop, implement and comply with a written grievance procedure for clients designed to allow clients to submit a grievance without fear of retaliation. The procedure shall include, but not be limited to:

1. process for filing a grievance;

2. a time line for responding to the grievance;
3. a method for responding to a grievance; and
4. the staff responsibilities for addressing and resolving grievances.

B. The facility shall ensure that:

1. the client and, if applicable, the client's parent(s) or legal guardian(s), is aware of and understands the grievance procedure; and

2. all grievances are addressed and resolved to the best of the center's ability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Subchapter I. Physical Environment

§5397. Interior Space

A. The CRC shall:

1. have a physical environment that protects the health, safety and security of the clients;

2. have routine maintenance and cleaning programs in all areas of the center;

3. be well-lit, clean, and ventilated;

4. conduct a risk assessment of each client and the physical environment of the facility in order to ensure the safety and well-being of all clients admitted to the facility;

5. maintain its physical environment, including, but not limited to, all equipment, fixtures, plumbing, electrical, and furnishings, in good order and safe condition in accordance with manufacturer's recommendations;

6. maintain heating, ventilation and cooling systems in good order and safe condition to ensure a comfortable environment; and

7. ensure that electric receptacles in client care areas are tamper-resistant or equipped with ground fault circuit interrupters.

B. Common Area. The CRC shall have designated space:

1. to be used for group meetings, dining, visitation, leisure and recreational activities;

2. that is at least 25 square feet per client and no less than 150 square feet exclusive of sleeping areas, bathrooms, areas restricted to staff and office areas; and

3. that contains tables for eating meals.

C. Bathrooms

1. Each bathroom to be used by clients shall contain:

a. a lavatory with:

i. paper towels or an automatic dryer;

ii. a soap dispenser with soap for individual use;

and

iii. a wash basin with hot and cold running water;

b. tubs and/or showers that:

i. have hot and cold water;

ii. have slip proof surfaces; and

iii. allow for individual privacy;

c. toilets:

i. an adequate supply of toilet paper;

ii. with seats; and

iii. that allow for individual privacy;

d. at least one sink, one tub or shower and one toilet for every eight clients;

e. shatterproof mirrors secured to the walls at convenient heights;

f. plumbing, piping, ductwork, and that are recessed or enclosed in order to be inaccessible to clients; and

g. other furnishings necessary to meet the clients' basic hygienic needs.

2. A CRC shall have at least one separate toilet and lavatory facility for the staff.

D. Sleeping Areas and Bedrooms

1. A CRC that utilizes a sleeping area for multiple clients shall ensure that its sleeping area:

a. is at least 60 square feet per bed of clear floor area; and

b. does not contain bunk beds.

2. Bedrooms. A CRC shall ensure that each bedroom:

a. accommodates no more than one client; and

b. is at least 80 square feet of clear floor area.

3. The CRC that utilizes a sleeping area for multiple clients shall maintain at least one bedroom.

4. The CRC shall ensure that each client:

a. has sufficient separate storage space for clothing, toilet articles and other personal belongings of clients;

b. has sheets, pillow, bedspread, towels, washcloths and blankets that are:

i. intact and in good repair,

ii. systematically removed from use when no longer usable;

iii. clean;

iv. provided as needed or when requested unless the request is unreasonable;

c. is given a bed for individual use that:

i. is no less than 30 inches wide;

ii. is of solid construction;

iii. has a clean, comfortable, impermeable, nontoxic and fire retardant mattress; and

iv. is appropriate to the size and age of the client.

E. Administrative and Staff Areas

1. The CRC shall maintain a space that is distinct from the client common areas that serves as an office for administrative functions.

2. The CRC shall have a designated space for nurses and other staff to complete tasks, be accessible to clients and to observe and monitor client activity within the unit.

F. Counseling and Treatment Area

1. The CRC shall have a designated space to allow for private physical examination that is exclusive of sleeping area and common space.

2. The CRC shall have a designated space to allow for private and small group discussions and counseling sessions between individual clients and staff that is exclusive of sleeping areas and common space.

3. The CRC may utilize the same space for the counseling area and examination area.

G. Seclusion Room

1. The CRC shall have at least one seclusion room that:

a. is for no more than one client; and

b. allows for continual visual observation and monitoring of the client either:

i. directly; or

ii. by a combination of video and audio;

- c. has a monolithic ceiling;
- d. is a minimum of 80 square feet; and
- e. contains a stationary restraint bed that is secure to the floor;
- f. flat walls that are free of any protrusions with angles;
- g. does not contain electrical receptacles;

H. Kitchen

1. If a CRC prepares meals on-site, the CRC shall have a full service kitchen that:
 - a. includes a cook top, oven, refrigerator, freezer, hand washing station, storage and space for meal preparation;
 - b. complies with OPH regulations;
 - c. has the equipment necessary for the preparation, serving, storage and clean-up of all meals regularly served to all of the clients and staff;
 - d. contains trash containers covered and made of metal or United Laboratories-approved plastic; and
 - e. maintains the sanitation of dishes.
2. A CRC that does not provide a full service kitchen accessible to staff 24 hours per day shall have a nourishment station or a kitchenette, restricted to staff only, in which staff may prepare nourishments for clients, that includes:
 - a. a sink;
 - b. a work counter;
 - c. a refrigerator;
 - d. storage cabinets;
 - e. equipment for preparing hot and cold nourishments between scheduled meals; and
 - f. space for trays and dishes used for non-scheduled meal service.
3. A CRC may utilize ice making equipment if the ice maker:
 - a. is self-dispensing; or
 - b. is in an area restricted to staff only;

I. Laundry

1. The CRC shall have an automatic washer and dryer for use by staff when laundering clients' clothing.
2. The CRC shall have:
 - a. provisions to clean and launder soiled linen, other than client clothing, either on-site or off-site by written agreement;
 - b. a separate area for holding soiled linen until it is laundered; and
 - c. a clean linen storage area.

J. Storage:

1. the CRC shall have separate and secure storage areas that are inaccessible to clients for the following:
 - a. client possessions that may not be accessed during their stay;
 - b. hazardous, flammable and/or combustible materials; and
2. records and other confidential information.

K. Furnishings

1. The CRC shall ensure that its furnishings are:
 - a. designed to suit the size, age and functional status of the clients;
 - b. in good repair;
 - c. clean;
 - d. promptly repaired or replaced if defective, run-down or broken.

L. Hardware, Fixtures and other Protrusions

1. If grab bars are used, the CRC shall ensure that the space between the bar and the wall shall be filled to prevent a cord from being tied around it.
2. All hardware as well as sprinkler heads, lighting fixtures and other protrusions shall be:
 - a. recessed or of a design to prohibit client access; and
 - b. tamper-resistant.
3. Towel bars, shower curtain rods, clothing rods and hooks are prohibited.

M. Ceilings

1. The CRC shall ensure that the ceiling is:
 - a. no less than 7.5 feet high and secured from access; or
 - b. at least 9 feet in height; and
 - c. all overhead plumbing, piping, duct work or other potentially hazardous elements shall be concealed above the ceiling.

N. Doors and Windows

1. All windows shall be fabricated with laminated safety glass or protected by polycarbonate, laminate or safety screens.
2. Door hinges shall be designed to minimize points for hanging.
3. Except for specifically designed antiligature hardware, door handles shall point downward in the latched or unlatched position.
4. All hardware shall have tamper-resistant fasteners.
5. The center shall ensure that outside doors, windows and other features of the structure necessary for safety and comfort of individuals:
 - a. are secured for safety;
 - b. prohibit clients from gaining unauthorized egress;
 - c. prohibit an outside from gaining unauthorized ingress;
 - d. if in disrepair, not accessible to clients until repaired; and
 - e. repaired as soon as possible.
6. The facility shall ensure that all closets, bedrooms and bathrooms for clients that are equipped with doors do not have locks and can be readily opened from both sides.

O. Smoking

1. The CRC shall prohibit smoking in the interior of the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5399. Exterior Space Requirements

A. The CRC shall maintain all exterior areas to prevent elopement, injury, suicide and the introduction of contraband, and shall maintain a perimeter security system designed to monitor and control visitor access and client egress.

B. The facility shall maintain all exterior areas and structures of the facility in good repair and free from any reasonably foreseeable hazard to health or safety.

C. The facility shall ensure the following:

1. garbage stored outside is secured in non-combustible, covered containers and are removed on a regular basis;

2. trash collection receptacles and incinerators are separate from any area accessible to clients and located as to avoid being a nuisance;

3. unsafe areas, including steep grades, open pits, swimming pools, high voltage boosters or high speed roads are fenced or have natural barriers to protect clients;

4. fences that are in place are in good repair;

5. exterior areas are well lit; and

6. the facility has appropriate signage that:

a. is visible to the public;

b. indicates the facility's legal or trade name;

c. clearly states that the CRC provides behavioral health services only; and

d. indicates the center is not hospital or emergency room.

D. A CRC with an outdoor area to be utilized by its clients shall ensure that the area is safe and secure from access and egress.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Subchapter J. Safety and Emergency Preparedness

Chapter 54. Crisis Receiving Centers

§5401. General Safety Provisions

A. The CRC shall provide additional supervision when necessary to provide for the safety of all clients.

B. The CRC shall:

1. prohibit weapons of any kind on-site;

2. prohibit glass, hand sanitizer, plastic bags in client-care areas;

3. ensure that all poisonous, toxic and flammable materials are:

a. maintained in appropriate containers and labeled as to the contents;

b. securely stored in a locked cabinet or closet;

c. are used in such a manner as to ensure the safety of clients, staff and visitors; and

d. maintained only as necessary;

4. ensure that all equipment, furnishing and any other items that are in a state of disrepair are removed and inaccessible to clients until replaced or repaired; and

5. ensure that when potentially harmful materials such as cleaning solvents and/or detergents are used, training is provided to the staff and they are used by staff members only.

C. The CRC shall ensure that a first aid kit is available in the facility and in all vehicles used to transport clients.

D. The CRC shall simulate fire drills and other emergency drills at least once a quarter while maintaining client safety and security during the drills.

E. Required Inspections. The CRC shall pass all required inspections and keep a current file of reports and other documentation needed to demonstrate compliance with applicable laws and regulations.

F. The CRC shall have an on-going safety program to include:

1. continuous inspection of the facility for possible hazards;

2. continuous monitoring of safety equipment and maintenance or repair when needed;

3. investigation and documentation of all accidents or emergencies; and

4. fire control, evacuation planning and other emergency drills.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5403. Infection Control

A. The CRC shall provide a sanitary environment to avoid sources and transmission of infections and communicable diseases.

B. The CRC shall have an active Infection Control Program that requires:

1. reporting of infectious disease in accordance with OPH guidelines;

2. monitoring of:

a. the spread of infectious disease;

b. hand washing;

c. staff and client education; and

d. incidents of specific infections in accordance with OPH guidelines;

3. corrective actions;

4. a designated Infection Control coordinator who:

a. has education and/or experience in infection control;

b. develops and implements policies and procedures governing the infection control program;

c. takes universal precautions; and

d. strictly adheres to all sanitation requirements;

5. the CRC shall maintain a clean and sanitary environment and shall ensure that:

a. supplies and equipment are available to staff;

b. there is consistent and constant monitoring and cleaning of all areas of the facility;

c. the methods used for cleaning, sanitizing, handling and storing of all supplies and equipment prevent the transmission of infection;

d. directions are posted for sanitizing both kitchen and bathroom and laundry areas;

e. showers and bathtubs are to be sanitized by staff between client usage;

f. clothing belonging to clients must be washed and dried separately from the clothing belonging to other clients; and

g. laundry facilities are used by staff only;

h. food and waste are stored, handled, and removed in a way that will not spread disease, cause odor, or provide a breeding place for pests;

C. the CRC may enter into a written contract for housekeeping services necessary to maintain a clean and neat environment;

D. each CRC shall have an effective pest control plan;

E. after discharge of a client, the CRC shall:

1. clean the bed, mattress, cover, bedside furniture and equipment;

2. ensure that mattresses, blankets and pillows assigned to clients are intact and in a sanitary condition; and

3. ensure that the mattress, blankets and pillows used for a client are properly sanitized before assigned to another client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5405. Emergency Preparedness

A. The CRC shall have a written emergency preparedness plan to:

1. maintain continuity of the center's operations in preparation for, during and after an emergency or disaster; and
2. manage the consequences of all disasters or emergencies that disrupt the center's ability to render care and treatment, or threaten the lives or safety of the clients.

B. The CRC shall:

1. post exit diagrams describing how to clear the building safely and in a timely manner;
2. have a clearly labeled and legible master floor plan(s) that indicates:
 - a. the areas in the facility that are to be used by clients as shelter or safe zones during emergencies;
 - b. the location of emergency power outlets and whether they are powered;
 - c. the locations of posted, accessible, emergency information; and
 - d. what will be powered by emergency generator(s), if applicable;
3. train its employees in emergency or disaster preparedness. Training shall include orientation, ongoing training and participation in planned drills for all personnel.

C. The CRC's emergency preparedness plan shall include the following information, at a minimum.

1. If the center evacuates, the plan shall include:
 - a. provisions for the evacuation of each client and delivery of essential services to each client;
 - b. the center's method of notifying the client's family or caregiver, if applicable, including:
 - i. the date and approximate time that the facility or client is evacuating;
 - ii. the place or location to which the client(s) is evacuating which includes the name, address and telephone number; and
 - iii. a telephone number that the family or responsible representative may call for information regarding the client's evacuation;
 - c. provisions for ensuring that supplies, medications, clothing and a copy of the treatment plan are sent with the client, if the client is evacuated;
 - d. the procedure or methods that will be used to ensure that identification accompanies the client including:
 - i. current and active diagnosis;
 - ii. medication, including dosage and times administered;
 - iii. allergies;
 - iv. special dietary needs or restrictions; and
 - v. next of kin, including contact information if applicable;
 - e. transportation or arrangements for transportation for an evacuation.

2. Provisions for staff to maintain continuity of care during an emergency as well as for distribution and assignment of responsibilities and functions.

3. The delivery of essential care and services to clients who are housed in the facility or by the facility at another location, during an emergency or disaster.

4. The determination as to when the facility will shelter in place and when the facility will evacuate for a disaster or emergency and the conditions that guide these determinations in accordance with local or parish OSHEP.

5. If the center shelters in place, provisions for seven days of necessary supplies to be provided by the center prior to the emergency, including drinking water or fluids and non-perishable food.

D. The center shall:

1. follow and execute its emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency;
2. if the state, parish or local OHSEP orders a mandatory evacuation of the parish or the area in which the agency is serving, shall ensure that all clients are evacuated according to the facility's emergency preparedness plan;
3. not abandon a client during a disaster or emergency;
4. review and update its emergency preparedness plan at least once a year;
5. cooperate with the department and with the local or parish OHSEP in the event of an emergency or disaster and shall provide information as requested;
6. monitor weather warnings and watches as well as evacuation order from local and state emergency preparedness officials;
7. upon request by the department, submit a copy of its emergency preparedness plan for review;
8. upon request by the department, submit a written summary attesting to how the plan was followed and executed to include, at a minimum:
 - a. pertinent plan provisions and how the plan was followed and executed;
 - b. plan provisions that were not followed;
 - c. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
 - d. contingency arrangements made for those plan provisions not followed; and
 - e. a list of all injuries and deaths of clients that occurred during execution of the plan, evacuation or temporary relocation including the date, time, causes and circumstances of the injuries and deaths.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§5407. Inactivation of License due to a Declared Disaster or Emergency

A. A CRC located in a parish which is the subject of an executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766, may seek to inactivate its license for a period not to exceed one year, provided that the center:

1. submits written notification to HSS within 60 days of the date of the executive order or proclamation of emergency or disaster that:
 - a. the CRC has experienced an interruption in the provisions of services as a result of events that are the subject of such executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766;

b. the CRC intends to resume operation as a CRC in the same service area;

c. includes an attestation that the emergency or disaster is the sole casual factor in the interruption of the provision of services;

d. includes an attestation that all clients have been properly discharged or transferred to another facility; and

e. lists the clients and the location of the discharged or transferred clients;

2. resumes operating as a CRC in the same service area within one year of the issuance of an executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766;

3. continues to pay all fees and cost due and owed to the department including, but not limited to, annual licensing fees and outstanding civil fines; and

4. continues to submit required documentation and information to the department.

B. Upon receiving a completed request to inactivate a CRC license, the department shall issue a notice of inactivation of license to the CRC.

C. In order to obtain license reinstatement, a CRC with a department-issued notice of inactivation of license shall:

1. submit a written license reinstatement request to HSS 60 days prior to the anticipated date of reopening that includes:

a. the anticipated date of opening, and a request to schedule a licensing survey;

b. a completed licensing application and other required documents with licensing fees, if applicable; and

c. written approvals for occupancy from OSFM and OPH.

D. Upon receiving a completed written request to reinstate a CRC license and other required documentation, the department shall conduct a licensing survey.

E. If the CRC meets the requirements for licensure and the requirements under this subsection, the department shall issue a notice of reinstatement of the center's license.

F. During the period of inactivation, the department prohibits:

1. a change of ownership (CHOW) in the CRC; and

2. an increase in the licensed capacity from the CRC's licensed capacity at the time of the request to inactivate the license.

G. The provisions of this Section shall not apply to a CRC which has voluntarily surrendered its license.

H. Failure to comply with any of the provisions of this Section shall be deemed a voluntary surrender of the CRC license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Interim Secretary

1304#062

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Disproportionate Share Hospital Payments Low Income and Needy Care Collaboration (LAC 50:V.2503 and 2713)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.2503 and adopts §2713 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the Rules governing the disproportionate share hospital (DSH) payment methodology in LAC 50:V.Chapters 25 and 27 (*Louisiana Register*, Volume 34, Number 4). The department amended the provisions governing disproportionate share hospital payments to provide for a supplemental payment to hospitals that enter into an agreement with a state or local governmental entity for the purpose of providing healthcare services to low income and needy patients (*Louisiana Register*, Volume 36, Number 1). The department promulgated an Emergency Rule which amended the provisions of the January 20, 2010 Emergency Rule to revise the participation requirements for the Low Income and Needy Care Collaboration (*Louisiana Register*, Volume 37, Number 1). This Emergency Rule is being promulgated to continue the provisions of the January 1, 2011 Emergency Rule. This action is being taken to secure new federal funding and to promote the public health and welfare of uninsured individuals by assuring that hospitals are adequately reimbursed for furnishing uncompensated care.

Effective April 27, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing disproportionate share hospital payments.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 3. Disproportionate Share Hospital Payments Chapter 25. Disproportionate Share Hospital Payment Methodologies

§2503. Disproportionate Share Hospital Qualifications

A. - A.5. ...

6. effective September 15, 2006, be a non-rural community hospital as defined in §2701.A.;

7. effective January 20, 2010, be a hospital participating in the Low Income and Needy Care Collaboration as defined in §2713.A.; and

8. effective July 1, 1994, must also have a Medicaid inpatient utilization rate of at least 1 percent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:655 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Chapter 27. Qualifying Hospitals

§2713. Low Income and Needy Care Collaboration

A. Definitions

Low Income and Needy Care Collaboration Agreement—an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

B. In order to qualify under this DSH category in any period, a hospital must be party to a Low Income and Needy Care Collaboration Agreement with the Department of Health and Hospitals in that period.

C. DSH payments to Low Income and Needy Care Collaborating Hospitals shall be calculated as follows.

1. In each quarter, the department shall divide hospitals qualifying under this DSH category into two pools. The first pool shall include hospitals that, in addition to qualifying under this DSH category, also qualify for DSH payments under any other DSH category. Hospitals in the first pool shall be eligible to receive DSH payments under §2713.C.2 provisions. The second pool shall include all other hospitals qualifying under this DSH category. Hospitals in the second pool shall be eligible to receive DSH payments under §2713.C.3 provisions.

2. In each quarter, to the extent the department appropriates funding to this DSH category, hospitals that qualify under the provisions of §2713.C.2 shall receive 100 percent of the total amount appropriated by the department for this DSH category.

a. If the net uncompensated care costs of these hospitals exceed the amount appropriated for this pool, payment shall be made based on each hospital's pro rata share of the pool.

i. The pro rata share shall be calculated by dividing the hospital's net uncompensated care costs by the total of the net uncompensated care costs for all hospitals qualifying under §2713.C.2 and multiplying by the amount appropriated by the department.

b. If the amount appropriated for this DSH category exceeds the net uncompensated care costs of all hospitals qualifying under §2713.C.2, payment shall be made up to each hospital's net uncompensated care costs.

c. Any amount available after all distributions are made under §2713.C.2 provisions shall be distributed subject to the provisions in §2713.C.3.

3. In each quarter, to the extent distributions are available, and after all distributions are made under §2713.C.2 provisions, distributions under §2713.C.3 provisions shall be made according to the following terms.

a. If the net uncompensated care costs of all hospitals qualifying for payment under §2713.C.3 provisions exceed the amount available for this pool, payment shall be made based on each hospital's pro rata share of the pool.

i. The pro rata share shall be calculated by dividing its net uncompensated care costs by the total of the net uncompensated care costs for all hospitals qualifying under §2713.C.3.

b. If the amount available for payments under §2713.C.3 exceeds the net uncompensated care costs of all qualifying hospitals, payments shall be made up to each hospital's net uncompensated care costs and the remaining amount shall be used by the department to make disproportionate share payments under this DSH category in future quarters.

D. In the event it is necessary to reduce the amount of disproportionate share payments under this DSH category to remain within the federal disproportionate share allotment in any quarter, the department shall calculate a pro rata decrease for each hospital qualifying under the provisions of §2713.C.3.

1. The pro rata decrease shall be based on a ratio determined by:

a. dividing that hospital's DSH payments by the total DSH payments for all hospitals qualifying under §2713.C.3 in that quarter; and

b. multiplying the amount of DSH payments calculated in excess of the federal disproportionate share allotment.

2. If necessary in any quarter, the department will reduce Medicaid DSH payments under these provisions to zero for all applicable hospitals.

E. After the reduction in §2713.D has been applied, if it is necessary to further reduce the amount of DSH payments under this DSH category to remain within the federal disproportionate share allotment in any quarter, the department shall calculate a pro rata decrease for each hospital qualifying under §2713.C.2.

1. The pro rata decrease shall be based on a ratio determined by:

a. dividing that hospital's DSH payments by the total DSH payments for all hospitals qualifying under §2713.C.2 in that quarter; and

b. multiplying the amount of DSH payments calculated in excess of the federal disproportionate share allotment.

2. If necessary in any quarter, the department shall reduce Medicaid DSH payments under these provisions to zero for all applicable hospitals.

F. Qualifying hospitals must submit costs and patient specific data in a format specified by the department. Costs and lengths of stay will be reviewed for reasonableness before payments are made.

G. Payments shall be made on a quarterly basis, however, each hospital's eligibility for DSH and net uncompensated care costs shall be determined on an annual basis.

H. Payments to hospitals qualifying under this DSH category shall be made subsequent to any DSH payments for which a hospital is eligible under another DSH category.

I. Aggregate DSH payments for hospitals that receive payment from this category, and any other DSH category, shall not exceed the hospital's specific DSH limit. If payments calculated under this methodology would cause a hospital's aggregate DSH payment to exceed the limit, the payment from this category shall be capped at the hospital's specific DSH limit. The remaining payments shall be redistributed to the other hospitals in accordance with these provisions.

J. If the amount appropriated for this DSH category exceeds the specific DSH limits of all qualifying hospitals, payment will be made up to each hospital's specific DSH limit and the remaining amount shall be used by the department to make disproportionate share payments under this DSH category in future quarters.

K. Effective for dates of service on or after January 1, 2011, all parties that participate in Medicaid DSH payments under this Section, either as a qualifying hospital by receipt of Medicaid DSH payments or as a state or local governmental entity funding Medicaid DSH payments, must meet the following conditions during the period of their participation:

1. Each participant must comply with the prospective conditions of participation in the Louisiana Private Hospital Upper Payment Limit Supplemental Reimbursement Program.

2. A participating hospital may not make a cash or in-kind transfer to their affiliated governmental entity that has a direct or indirect relationship to Medicaid payments and would violate federal law.

3. A participating governmental entity may not condition the amount it funds the Medicaid Program on a specified or required minimum amount of low income and needy care.

4. A participating governmental entity may not assign any of its contractual or statutory obligations to an affiliated hospital.

5. A participating governmental entity may not recoup funds from an affiliated hospital that has not adequately performed under the low income and needy care collaboration agreement.

6. A participating hospital may not return any of the Medicaid DSH payments it receives under this Section to the governmental entity that provides the non-federal share of the Medicaid DSH payments.

7. A participating governmental entity may not receive any portion of the Medicaid DSH payments made to a participating hospital under this Section.

L. Each participant must certify that it complies with the requirements of §2713.K by executing the appropriate certification form designated by the department for this purpose. The completed form must be submitted to the Department of Health and Hospitals, Bureau of Health Services Financing.

M. Each qualifying hospital must submit a copy of its low income and needy care collaboration agreement to the department.

N. The Medicaid DSH payments authorized in LAC 50:V.Subpart 3 shall not be considered as interim Medicaid inpatient payments in the determination of cost settlement amounts for inpatient hospital services rendered by children's specialty hospitals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to all inquiries regarding this

Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Interim Secretary

1304#069

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Disproportionate Share Hospital Payments Small Rural Hospitals—Qualifying Criteria (LAC 50:V.2705)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.2705 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the Rules governing the disproportionate share hospital (DSH) payment methodology in LAC 50:V.Chapters 25 and 27 (*Louisiana Register*, Volume 34, Number 4).

Act 147 of the 2010 Regular Session of the Louisiana Legislature redefined the qualifying criteria for rural hospitals. In compliance with Act 147, the department promulgated an Emergency Rule which amended the provisions governing DSH payments to small rural hospitals in order to redefine the qualifying criteria (*Louisiana Register*, Volume 38, Number 8). This Emergency Rule is being promulgated to continue the provisions of the September 1, 2012 Emergency Rule. This action is being taken to promote the public health and welfare of uninsured individuals to ensure their continued access to health care by assuring that hospitals are adequately reimbursed for furnishing uncompensated care.

Effective May 1, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing disproportionate share hospital payments to small-rural hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 3. Disproportionate Share Hospital Payments Chapter 27. Qualifying Hospitals §2705. Small-Rural Hospitals

A. Definitions

* * *

Small Rural Hospital—a hospital (excluding a long-term care hospital, rehabilitation hospital, or freestanding psychiatric hospital but including distinct part psychiatric units) that meets the following criteria:

a. - l.i. ...

- ii. in a parish with a population of less than 15,800 as measured by the 2000 census; or
- m. has no more than 60 hospital beds as of November 1, 2013 and is located:
 - i. as measured by the 2000 census, in a municipality with a population of less than 33,000;
 - ii. as measured by the 2000 census, in a parish with a population of less than 68,000; and
 - iii. within 3 miles of Jackson Barracks.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:655 (April 2008), amended LR 34:2402 (November 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Center for Medicaid Services (CMS) if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Interim Secretary

1304#070

DECLARATION OF EMERGENCY
Department of Health and Hospitals
Bureau of Health Services Financing

Early and Periodic Screening, Diagnosis and Treatment—Repeal of Dental Services Removal
(LAC 50:XV.6515 and Chapter 69)

The Department of Health and Hospitals, Bureau of Health Services Financing hereby rescinds the January 1, 2013 Emergency Rule which adopted LAC 50:XV.6515 and repealed Chapter 69 governing Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program dental services covered under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing EPSDT dental services in order to remove these provisions as the department was proposing to establish a dental benefits plan through a coordinated care network to provide dental services to all Medicaid recipients under the age of 21.

Upon further consideration, the department has now determined that it is necessary to rescind the January 1, 2013

Emergency Rule governing the Early and Periodic Screening, Diagnosis and Treatment Program which appeared in the January 20, 2013 edition of the *Louisiana Register* on page 29.

Effective April 20, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing rescinds the January 1, 2013 Emergency Rule which transitioned dental services from the Early and Periodic Screening, Diagnosis and Treatment Program to a coordinated care network dental benefits plan.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Interim Secretary

1304#063

DECLARATION OF EMERGENCY
Department of Health and Hospitals
Bureau of Health Services Financing

Federally-Qualified Health Centers
Fluoride Varnish Applications
(LAC 50:XI.10301 and 10701)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XI.10301 and §10701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing federally qualified health centers (FQHCs) to provide Medicaid reimbursement for diabetes self-management training services and to reorganize the existing provisions governing provider participation and services in a more clear and concise manner in the *Louisiana Administrative Code (Louisiana Register, Volume 37, Number 9)*. The department published an Emergency Rule which amended the September 20, 2011 Rule to adopt provisions for the coverage of fluoride varnish application services rendered to Medicaid recipients (*Louisiana Register* Volume 37, Number 11). The department promulgated an Emergency Rule which amended the December 1, 2011 Emergency Rule to clarify the provisions governing the scope of services for fluoride varnish applications (*Louisiana Register, Volume 38, Number 1*). This Emergency Rule is being promulgated to continue the provisions of the January 20, 2012 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients.

Effective May 18, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing federally qualified health centers.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XI. Clinic Services
Subpart 13. Federally-Qualified Health Centers
Chapter 103. Services
§10301. Scope of Services

A. - B.1....

C. Effective December 1, 2011, the department shall provide coverage for fluoride varnish applications performed in the FQHC. This service shall be limited to recipients from six months through five years of age. Fluoride varnish applications may be covered once every six months per Medicaid recipient.

1. Fluoride varnish applications shall be reimbursed when performed in the FQHC by:

- a. the appropriate dental providers;
- b. physicians;
- c. physician assistants;
- d. nurse practitioners;
- e. registered nurses; or
- f. licensed practical nurses.

2. All participating staff shall review the Smiles for Life training module for fluoride varnish and successfully pass the post assessment. All staff involved in the varnish application must be deemed as competent to perform the service by the FQHC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2328 (October 2004), repromulgated LR 30:2487 (November 2004), amended LR 32:1901 (October 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2927 (September 2011), LR 39:

Chapter 107. Reimbursement Methodology

§10701. Prospective Payment System

A. - B.3.a. ...

4. Effective for dates of service on or after December 1, 2011, the Medicaid Program shall include coverage for fluoride varnish applications in the FQHC encounter rate.

a. Fluoride varnish applications shall only be reimbursed to the FQHC when performed on the same date of service as an office visit or preventative screening. Separate encounters for fluoride varnish services are not permitted and the application of fluoride varnish does not constitute an encounter visit.

C. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1902 (October 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2630 (September 2011), LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Interim Secretary

1304#071

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing
and
Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Children's Choice—Allocation of Waiver Opportunities
(LAC 50:XXI.11107)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XXI.11107 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities adopted provisions in the Children's Choice Waiver for the allocation of additional waiver opportunities for the Money Follows the Person Rebalancing Demonstration Program (*Louisiana Register*, Volume 35, Number 9). The department promulgated an Emergency Rule which amended the provisions of the Children's Choice Waiver to provide for the allocation of waiver opportunities for children who have been identified by the Office for Citizens with Developmental Disabilities regional offices and human services authorities and districts as meeting state-funded family support criteria for priority level 1 and 2, and needing more family support services than what is currently available through state-funded family support services (*Louisiana Register*, Volume 36, Number 9).

The department now proposes to amend the provisions of the September 20, 2010 Emergency Rule in order to correct a formatting error within the Section. This action is being taken to secure enhanced federal funding, and to ensure that these provisions are promulgated in a clear and concise manner.

Effective April 20, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions of the September 20, 2010 Emergency Rule governing the allocation of opportunities in the children's choice waiver.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community-Based Services
Waivers
Subpart 9. Children's Choice
Chapter 111. General Provisions
§11107. Allocation of Waiver Opportunities

A. The order of entry in the children's choice waiver is first come, first served from a statewide list arranged by date of application for the developmental disabilities request for services registry for the new opportunities waiver. Families shall be given a choice of accepting an opportunity in the

children's choice waiver or remaining on the DDRFSR for the NOW.

1. The only exceptions to the first come, first served allocation of waiver opportunities shall be for the:

a. money follows the person rebalancing demonstration waiver opportunities which are allocated to demonstration participants only; and

b. waiver opportunities which are allocated to children who have been determined to need more services than what is currently available through state funded family support services.

B. - B.1.b. ...

C. Four hundred twenty-five opportunities shall be designated for qualifying children with developmental disabilities that have been identified by the Office for Citizens with Developmental Disabilities (OCDD) regional offices and human services authorities and districts as needing more family support services than what is currently available through state funded family support services.

1. To qualify for these waiver opportunities, children must:

a. be under 18 years of age;

b. be designated by the OCDD regional office, human services authority or district as meeting priority level 1 or 2 criteria;

c. be Medicaid-eligible;

d. be eligible for state developmental disability services; and

e. meet the ICF/DD level of care.

2. Each OCDD regional office and human services authority or district shall be responsible for the prioritization of these opportunities. Priority levels shall be defined according to the following criteria.

a. Priority Level 1. Without the requested supports, there is an immediate or potential threat of out-of-home placement or homelessness due to:

i. the individual's medical care needs;

ii. documented abuse or neglect of the individual;

iii. the individual's intense or frequent challenging behavioral needs; or

iv. death or inability of the caregiver to continue care due to their own age or health; or

v. the possibility that the individual may experience a health crisis leading to death, hospitalization or placement in a nursing facility.

b. Priority Level 2. Supports are needed to prevent the individual's health from deteriorating or the individual from losing any of their independence or productivity.

3. Children who qualify for one of these waiver opportunities are not required to have a protected request date on the Developmental Disabilities Request for Services Registry.

4. Each OCDD regional office, human services authority and district shall have a specific number of these opportunities designated to them for allocation to waiver recipients.

5. In the event one of these opportunities is vacated, the opportunity shall be returned to the allocated pool for that particular OCDD regional office, human services authority or district for another opportunity to be offered.

6. Once all of these opportunities are filled, supports and services, based on the priority determination system,

will be identified and addressed through other resources currently available for individuals with developmental disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:1892 (September 2009), amended LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Interim Secretary

1304#064

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Bureau of Health Services Financing
and**

Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Residential Options Waiver
(LAC 50:XXI.Chapters 161-169)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XXI.Chapters 161-169 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B) (1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities adopted provisions establishing the Residential Options Waiver (ROW), a home and community-based services (HCBS) waiver program, to promote independence for individuals with developmental disabilities by offering a wide array of services, supports and residential options that assist individuals to transition from institutional care (*Louisiana Register*, Volume 33, Number 11). The department promulgated an Emergency Rule which amended the November 20, 2007 Rule to revise the provisions governing the allocation of waiver opportunities and the delivery of services in order to provide greater clarity (*Louisiana Register*, Volume 36, Number 4). As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the Residential Options Waiver to clarify the provisions governing the annual service budget

for waiver participants and to reduce the reimbursement rates for waiver services (*Louisiana Register*, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions of the May 1, 2010 Emergency Rule to incorporate the provisions of the August 1, 2010 Emergency Rule (*Louisiana Register*, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions of the August 20, 2010 Emergency Rule governing the allocation of waiver opportunities in order to adopt criteria for crisis diversion, to revise the provisions governing the individuals who may be offered a waiver opportunity, and to clarify the provisions governing the Developmental Disabilities Request for Services Registry (*Louisiana Register*, Volume 37, Number 6). This Emergency Rule is being promulgated to continue the provisions of the May 20, 2011 Emergency Rule. This action is being taken to comply with the provisions of the approved waiver application and to secure enhanced federal funding.

Effective May 15, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions governing the Residential Options Waiver.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXI. Home and Community Based Services Waivers

Subpart 13. Residential Options Waiver

Chapter 161. General Provisions

§16101. Introduction

A. The residential options waiver (ROW), a 1915(c) home and community-based services (HCBS) waiver, is designed to enhance the long-term services and supports available to individuals with developmental disabilities. These individuals would otherwise require an intermediate care facility for persons with developmental disabilities (ICF/DD) level of care.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16103. Program Description

A. The ROW is designed to utilize the principles of self determination and to supplement the family and/or community supports that are available to maintain the individual in the community. In keeping with the principles of self-determination, ROW includes a self-direction option which allows for greater flexibility in hiring, training and general service delivery issues. ROW services are meant to enhance, not replace existing informal networks.

B. ROW offers an alternative to institutional care that:

1. utilizes a wide array of services, supports and residential options which best meet the individual's needs and preferences;
2. meets the highest standards of quality and national best practices in the provision of services; and
3. ensures health and safety through a comprehensive system of participant safeguards.

4. Repealed.

C. All ROW services are accessed through the support coordination agency of the participant's choice.

1. The plan of care (POC) shall be developed using a person-centered process coordinated by the participant's support coordinator.

D. All services must be prior authorized and delivered in accordance with the approved POC.

E. The total expenditures available for each waiver participant is established through an assessment of individual support needs and will not exceed the approved ICF/DD ICAP rate established for that individual.

1. When the department determines that it is necessary to adjust the ICF/DD ICAP rate, each waiver participant's annual service budget shall be adjusted to ensure that the participant's total available expenditures do not exceed the approved ICAP rate.

F. No reimbursement for ROW services shall be made for a participant who is admitted to an inpatient setting.

G. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16105. Participant Qualifications

A. In order to qualify for services through the ROW, an individual must be offered a ROW opportunity and meet all of the following criteria:

1. have a developmental disability as specified in the Louisiana Developmental Disability Law and determined through the developmental disabilities system entry process;
2. meet the requirements for an ICF/DD level of care which requires active treatment for developmental disabilities under the supervision of a qualified developmental disabilities professional;
3. meet the financial eligibility requirements for the Louisiana Medicaid Program;
4. be a resident of Louisiana; and
5. be a citizen of the United States or a qualified alien.

B. Assurances are required that the health, safety and welfare of the individual can be maintained in the community with the provision of ROW services.

1 - 3.c. Repealed.

C. Justification must be documented in the OCDD approved POC that the ROW services are appropriate, cost effective and represent the least restrictive environment for the individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and Office for Citizens with Developmental Disabilities, LR 39:

§16106. Money Follows the Person Rebalancing Demonstration

A. The money follows the person (MFP) rebalancing demonstration is a federal demonstration grant awarded by the Centers for Medicare and Medicaid Services to the

Department of Health and Hospitals. The MFP demonstration is a transition program that targets individuals using qualified institutional services and moves them to home and community-based long-term care services.

1. For the purposes of these provisions, a qualified institution is a nursing facility, hospital, or Medicaid enrolled intermediate care facility for people with developmental disabilities (ICF/DD).

B. Participants must meet the following criteria for participation in the MFP Rebalancing Demonstration.

1. Participants with a developmental disability must:

a. occupy a licensed, approved Medicaid enrolled nursing facility, hospital or ICF/DD bed for at least three consecutive months; and

b. be Medicaid eligible, eligible for state developmental disability services, and meet an ICF/DD level of care.

2. The participant or his/her responsible representative must provide informed consent for both transition and participation in the demonstration.

C. Participants in the demonstration are not required to have a protected date on the developmental disabilities request for services registry.

D. All other ROW provisions apply to the Money Follows the Person Rebalancing Demonstration.

E. MFP participants cannot participate in ROW shared living services which serve more than four persons in a single residence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office for Citizens with Developmental Disabilities, LR 39:

§16107. Programmatic Allocation of Waiver Opportunities

A. The developmental disabilities request for services registry (RFSR), hereafter referred to as “the registry,” shall be used to evaluate individuals for ROW opportunities and to fill waiver opportunities for persons with developmental disabilities, except for those specific opportunities to be provided to persons who are described in Paragraph B.1-5 of this Section, who are not on the registry.

1. The next individual on the registry shall be notified in writing that a waiver opportunity is available and that he/she is next in line to be evaluated for a possible waiver assignment. The individual shall then choose a support coordination agency that will assist in the gathering of the documents needed for both the financial eligibility and medical certification process for the level of care determination.

a. - e. Repealed.

2. If the individual is determined to be ineligible, either financially or medically, that individual shall be notified in writing. The next individual on the registry shall be notified, as stated in Paragraph B.1 of this Section, and the process continues until an eligible individual is assigned the waiver opportunity.

3. A waiver opportunity shall be assigned to an individual when eligibility is established and the individual is certified. By accepting a ROW opportunity, this person’s name will be removed from the registry.

B. ROW opportunities will be offered to the following individuals:

1. persons who meet the ICF/DD level of care and are being serviced through the OCDD Host Home contracts;

2. persons who meet the ICF/DD level of care and who need HCBS due to a health and/or safety crisis situation (crisis diversion):

a. requests for crisis diversion shall be made through OCDD. To be considered for a crisis diversion opportunity, the individual must need long-term supports, not temporary or short-term supports;

b. determination of priority for a crisis diversion ROW opportunity will be considered by OCDD for the individual who is eligible for services and meets one of the following criteria:

i. homeless;

ii. at imminent risk of losing current residential placement;

iii. referred by the judicial system;

iv. referred by child, adult, or elderly protective authorities;

v. without a caregiver and cannot adequately care for self;

vi. with a caregiver who can no longer provide care; or

vii. whose needs cannot be met within a community living situation;

3. children who:

a. are from birth to age 18;

b. reside in a nursing facility;

c. meet the high-need requirements for a nursing facility level of care, as well as the ROW level of care requirements;

d. participate in the MFP Rebalancing Demonstration; and

e. have parents or legal guardians who wish to transition them to a home and community-based residential services waiver;

4. persons who reside in a Medicaid-enrolled ICF/DD and wish to transition to a home and community-based residential services waiver through a voluntary ICF/DD bed conversion process;

5. persons who wish to transition from a supports and services center into a ROW opportunity;

6. adults in nursing facilities (NFs) who wish to transition to home and community-based residential services and who meet the level of care (LOC) that qualifies them for ROW eligibility based on their RFSR protected date on a first come, first served basis; and

7. persons residing in ICFs/DD who wish to transition to a home and community-based residential services setting and are eligible based on their RFSR protected date on a first come, first served basis.

C. The Office for Citizens with Developmental Disabilities has the responsibility to monitor the utilization of ROW opportunities. At the discretion of OCDD, specifically allocated waiver opportunities may be reallocated to better meet the needs of citizens with developmental disabilities in the State of Louisiana.

C.1. - E. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007) , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16109. Admission Denial or Discharge Criteria

A. Admission to the ROW Program shall be denied if one of the following criteria is met.

1. The individual does not meet the financial eligibility requirements for the Medicaid Program.
2. The individual does not meet the requirements for an ICF/DD level of care.
3. The individual does not meet developmental disability system eligibility.
4. The individual is incarcerated or under the jurisdiction of penal authorities, courts or state juvenile authorities.
5. The individual resides in another state.
6. The health and welfare of the individual cannot be assured through the provision of ROW services.
7. The individual fails to cooperate in the eligibility determination process or in the development of the POC.
8. Repealed.

B. Participants shall be discharged from the ROW Program if any of the following conditions are determined:

1. loss of Medicaid financial eligibility as determined by the Medicaid Program;
2. loss of eligibility for an ICF/DD level of care;
3. loss of developmental disability system eligibility;
4. incarceration or placement under the jurisdiction of penal authorities, courts or state juvenile authorities;
5. change of residence to another state ;
6. admission to an ICF/DD or nursing facility with the intent to stay and not to return to waiver services;
7. the health and welfare of the participant cannot be assured through the provision of ROW services in accordance with the participant's approved POC;
8. the participant fails to cooperate in the eligibility renewal process or the implementation of the approved POC, or the responsibilities of the ROW participant; or
9. continuity of stay for consideration of Medicaid eligibility under the special income criteria is interrupted as a result of the participant not receiving ROW services during a period of 30 consecutive days;
 - a. continuity of stay is not considered to be interrupted if the participant is admitted to a hospital, nursing facility or ICF/DD.
 - i. the participant shall be discharged from the ROW if the treating physician documents that the institutional stay will exceed 90 days.
10. continuity of services is interrupted as a result of the participant not receiving ROW services during a period of 30 consecutive days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2443 (November 2007) , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

Chapter 163. Covered Services

§16301. Assistive Technology and Specialized Medical Equipment and Supplies

A. Assistive technology and specialized medical equipment and supplies (AT/SMES) are equipment, devices, controls, appliances, supplies and services which enable the participant to:

1. have life support;
2. address physical conditions;
3. increase ability to perform activities of daily living;
4. increase, maintain or improve ability to function more independently in the home and/or community; and
5. increase ability to perceive, control or communicate.

B. AT/SMES services provided through the ROW include the following services:

1. evaluation of participant needs;
2. customization of the equipment or device;
3. coordination of necessary therapies, interventions or services;
4. training or technical assistance on the use and maintenance of the equipment or device for the participant or, where appropriate, his/her family members, legal guardian or responsible representative;
5. training or technical assistance, when appropriate, for professionals, other service providers, employers, or other individuals who are substantially involved in the participant's major life functions;
6. all service contracts and warranties included in the purchase of the item by the manufacturer; and
7. equipment or device repair and replacement of batteries and other items that contribute to ongoing maintenance of the equipment or device.

a. Separate payment will be made for repairs after expiration of the warranty only when it is determined to be cost effective.

C. Approval of AT/SMES services through ROW is contingent upon the denial of a prior authorization request for the item as a Medicaid State Plan service and demonstration of the direct medical, habilitative or remedial benefit of the item to the participant.

1. Items reimbursed in the ROW may be in addition to any medical equipment and supplies furnished under the Medicaid State Plan.

1.a. - 7. Repealed.

D. ...

E. Service Exclusions

1. Assistive technology devices and specialized equipment and supplies that are of general utility or maintenance and have no direct medical or remedial benefit to the participant are excluded from coverage.

2. Any equipment, device, appliance or supply that is covered and has been approved under the Medicaid State Plan, Medicare or any other third party insurance is excluded from coverage.

3. For adults over the age of 20 years, specialized chairs, whether mobile or travel, are not covered.

F. Provider Participation Requirements. Providers of AT/SMES services must meet the following participation requirements. The provider must:

1. be enrolled in the Medicaid Program as a assistive devices or durable medical equipment provider and must meet all applicable vendor standards and requirement for manufacturing, design and installation of technological equipment and supplies;

2. furnish written documentation of authorization to sell, install and/or repair technological equipment and supplies from the respective manufacturer of the designated equipment and supplies; and

3. provide documentation of individual employees' training and experience with the application, use, fitting and repair of the equipment or devices which they propose to sell or repair;

a. upon completion of the work and prior to payment, the provider shall give the participant a certificate of warranty for all labor and installation and all warranty certificates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2443 (November 2007) , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16303. Community Living Supports

A. Community living supports (CLS) are services provided to assist participants to achieve and maintain the outcomes of increased independence, productivity and inclusion in the community by utilizing teaching and support strategies. CLS may be furnished through self-direction or through a licensed, enrolled agency.

B. Community living supports are related to acquiring, retaining and improving independence, autonomy and adaptive skills. CLS may include the following services:

1. direct support services or self-help skills training for the performance of all the activities of daily living and self-care;

2. socialization skills training;

a. Repealed.

3. cognitive, communication tasks, and adaptive skills training; and

a. Repealed.

4. development of appropriate, positive behaviors.

a. - b. Repealed.

C. ...

D. Community living supports may be shared by up to three recipients who may or may not live together, and who have a common direct service provider. In order for CLS services to be shared, the following conditions must be met:

1. an agreement must be reached among all involved participants or their legal guardians regarding the provisions of shared CLS services;

2. the health and welfare of each participant must be assured though the provision of shared services;

3. services must be reflected in each participant's approved plan of care and based on an individual-by-individual determination; and

4. a shared rate must be billed.

E. - E.1. ...

2. Routine care and supervision that is normally provided by the participant's spouse or family, and services

provided to a minor by the child's parent or step-parent, are not covered.

3. CLS services may not be furnished in a home that is not leased or owned by the participant or the participant's family.

4. Participants may not live in the same house as CLS staff.

5. Room and board or maintenance, upkeep and improvement of the individual's or family's residence is not covered.

6. Community living supports shall not be provided in a licensed respite care facility.

a. - d. Repealed.

7. Community living supports services are not available to individuals receiving the following services:

a. shared living;

b. home host; or

c. companion care.

8. Community living supports cannot be billed or provided for during the same hours on the same day that the participant is receiving the following services:

a. day habilitation;

b. prevocational;

c. supported employment;

d. respite-out of home services; or

e. transportation-community access.

F. - F.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2443 (November 2007) , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16305. Companion Care

A. Companion care services assist the recipient to achieve and/or maintain the outcomes of increased independence, productivity and inclusion in the community. These services are designed for individuals who live independently and can manage their own household with limited supports. The companion provides services in the participant's home and lives with the participant as a roommate. Companion care services may be furnished through self-direction or through a licensed provider agency as outlined in the participant's POC. This service includes:

1. providing assistance with all of the activities of daily living as indicated in the participant's POC; and

2. community integration and coordination of transportation services, including medical appointments.

3. Repealed.

B. Companion care services can be arranged by licensed providers who hire companions, or services can be self-directed by the participant. The companion is a principal care provider who is at least 18 years of age who lives with the participant as a roommate and provides services in the participant's home.

1. - 2. Repealed.

C. Provider Responsibilities

1. The provider organization shall develop a written agreement as part of the participant's POC which defines all of the shared responsibilities between the companion and the

participant. The written agreement shall include, but is not limited to:

a. - c. ...

2. Revisions to this agreement must be facilitated by the provider and approved by the support team. Revisions may occur at the request of the participant, the companion, the provider or other support team members.

3. The provider is responsible for performing the following functions which are included in the daily rate:

a. arranging the delivery of services and providing emergency services as needed;

b. making an initial home inspection to the participant's home, as well as periodic home visits as required by the department;

c. contacting the companion a minimum of once per week or as specified in the participant's POC; and

d. providing 24-hour oversight and supervision of the Companion Care services, including back-up for the scheduled and unscheduled absences of the companion.

4. The provider shall facilitate a signed written agreement between the companion and the participant.

a. - b. Repealed.

D. Companion Responsibilities

1. The companion is responsible for:

a. participating in and abiding by the POC;

b. ...

c. purchasing his/her own food and personal care items.

E. Service Limits

1. The provider agency must provide relief staff for scheduled and unscheduled absences, available for up to 360 hours (15 days) as authorized by the POC. Relief staff for scheduled and unscheduled absences is included in the provider agency's rate

F. Service Exclusions

1. Companion Care is not available to individuals receiving the following services:

a. respite care service—out of home;

b. shared living;

c. community living supports; or

d. host home.

2. - 2.d. Repealed.

G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2444 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16307. Day Habilitation Services

A. Day habilitation services are aimed at developing activities and/or skills acquisition to support or further community integration opportunities outside of an individual's home. These activities shall promote independence, autonomy and assist the participant with developing a full life in his community. The primary focus of day habilitation services is acquisition of new skills or maintenance of existing skills based on individualized preferences and goals.

1. The skill acquisition and maintenance activities should include formal strategies for teaching the

individualized skills and include the intended outcome for the participant.

2. ...

3. As an individual develops new skills, training should progress along a continuum of habilitation services offered toward greater independence and self-reliance.

B. Day habilitation services shall:

1. focus on enabling participants to attain maximum skills;

2. be coordinated with any physical, occupational or speech therapies included in the participant's POC;

3. - 4. ...

a. services are based on a one-half day unit of service and on time spent at the service site by the participant;

b. the one-half day unit of service requires a minimum of 2.5 hours;

c. two one-half day units may be billed if the participant spends a minimum of 5 hours at the service site;

d. any time less than 2.5 hours of services is not billable or payable; and

e. no rounding up of hours is allowed.

C. The provider is responsible for all transportation from the agency to all work sites related to the provision of service.

1. Transportation to and from the service site is offered and billable as a component of the Day Habilitation service; however, transportation is payable only when a Day Habilitation service is provided on the same day.

2. - 4.c. Repealed.

D. Participants may receive more than one type of vocational/habilitative service per day as long as the service and billing criteria are followed and as long as requirements for the minimum time spent on site are adhered to.

E. Service Exclusions

1. Time spent traveling to and from the day habilitation program site shall not be included in the calculation of the total number of day habilitation service hours provided per day.

a. Travel training for the purpose of teaching the participant to use transportation services may be included in determining the total number of service hours provided per day, but only for the period of time specified in the POC.

2. Transportation-community access will not be used to transport ROW participants to any day habilitation services.

3. Day habilitation services cannot be billed or provided during the same hours on the same day as any of the following services:

a. community living supports;

b. professional services, except those direct contacts needed to develop a behavioral management plan or any other type of specialized assessment/plan; or

c. respite care services—out-of-home.

F. Provider Qualifications. Providers must be licensed as an adult day care agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2445 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services

Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16309. Dental Services

A. Dental services are available to adult participants over the age of 21 as a component of the ROW. Covered dental services include:

1. diagnostic services;
2. preventative services;
3. restorative services;
4. endodontic services;
5. periodontal services;
6. removable prosthodontics services;
7. maxillofacial prosthetics services;
8. fixed prosthodontics services;
9. oral and maxillofacial surgery
10. orthodontic services; and
11. adjunctive general services.

B. Service Exclusion. Participants must first access dental services covered under the Medicaid State Plan before utilizing dental services through the residential options waiver.

C. Provider Qualifications. Providers must have a current, valid license to provide dental services from the Louisiana State Board of Examiners for Dentistry for the specific dental services in all specialty areas provided to the participant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2445 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16311. Environmental Accessibility Adaptations

A. Environmental accessibility adaptations are physical adaptations to the participant's home or vehicle which must be specified in the POC as necessary to enable the participant to integrate more fully into the community and to ensure his/her health, welfare and safety.

1. Reimbursement shall not be paid until receipt of written documentation that the job has been completed to the satisfaction of the participant.

B. Environmental adaptation services to the home and vehicle include the following:

1. assessments to determine the types of modifications that are needed;
2. training the participant and appropriate direct care staff in the use and maintenance of devices, controls, appliances and related items;
3. repair of all equipment and/or devices, including replacement of batteries and other items that contribute to the ongoing maintenance of the adaptation(s); and
4. all service contracts and warranties which the manufacturer includes in the purchase of the item.

C. In order to accommodate the medical equipment and supplies necessary to assure the welfare of the participant, home accessibility adaptations may include the following:

1. installation of ramps and grab-bars;
2. widening of doorways;
3. modification of bathroom facilities; or
4. installation of specialized electric and plumbing systems.

D. Home accessibility adaptations may be applied to rental or leased property only under the following conditions:

1. the participant is renting or leasing the property; and
2. written approval is obtained from the landlord and OCDD.

E. - F.4.g. ...

5. Home modifications shall not be paid for in the following residential services:

- a. host home; or
- b. shared living settings which are provider owned or leased.

G. Vehicle adaptations are modifications to an automobile or van that is the waiver participant's primary means of transportation in order to accommodate his/her special needs. .

1. The modifications may include the installation of a lift or other adaptations to make the vehicle accessible to the participant or for him/her to drive.

2. Repealed.

H. Service Exclusions for Vehicle Adaptations

1. Payment will not be made to:

- a. adapt vehicles that are owned or leased by paid caregivers or providers of waiver services, or
 - b. to purchase or lease a vehicle.
2. - 4. ...

I. Provider Responsibilities

1. The environmental accessibility adaptation(s) must be delivered, installed, operational and reimbursed in the POC year in which it was approved.

a. - b. Repealed.

2. A written itemized detailed bid, including drawings with the dimensions of the existing and proposed floor plans relating to the modifications, must be obtained and submitted for prior authorization.

a. Repealed.

3. Vehicle modifications must meet all applicable standards of manufacture, design and installation for all adaptations to the vehicle.

4. Upon completion of the work and prior to payment, the provider shall give the participant a certificate of warranty for all labor and installation and all warranty certificates from manufacturers.

J. Provider Qualifications. In order to participate in the Medicaid Program, providers must meet the following qualifications.

1. Providers of environmental accessibility adaptations for the home must be registered through the Louisiana State Licensing Board for Contractors as a home improvement contractor.

a. In addition, these providers must:

- i. meet the applicable state and/or local requirements governing their licensure or certification; and
- ii. comply with the applicable state and local building or housing code standards governing home modifications.

b. The individuals performing the actual service (building contractors, plumbers, electricians, carpenters, etc.) must also comply with the applicable state and/or local requirements governing individual licensure or certification.

2. Providers of environmental accessibility adaptations to vehicles must be licensed by the Louisiana Motor Vehicle Commission as a specialty vehicle dealer and accredited by the National Mobility Equipment Dealers Association under the Structural Vehicle Modifier category.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2446 (November 2007) , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16313. Host Home

A. Host home services assist participants in meeting their basic adaptive living needs and offer direct support where required. Participants are afforded a welcoming, safe and nurturing family atmosphere in a family home environment in which the participant may receive supports, services and training in accordance with the POC. Host home services take into account compatibility, including individual interests, age, needs for privacy, supervision and support needs. These services are provided in a private home by a contractor of the host home agency who lives in the home, and either rents or owns the residence. The contractor utilizes specific teaching strategies to encourage independence and autonomy when required as a part of the participant's POC.

1. Repealed.

B. Host home services include:

1. assistance with the activities of daily living and adaptive living needs;

2. assistance to develop leisure interests and daily activities in the home setting;

3. assistance to develop relationships with other members of the household;

4. supports in accessing community services, activities and pursuing and developing recreational and social interests outside the home; and

5. teaching community living skills to achieve participant's goals concerning community and social life as well as to maintain contacts with biological families and natural supports.

C. Host home provider agencies oversee and monitor the host home contractor to ensure the availability, quality, and continuity of services as specified in the ROW manual. Host home provider agencies are responsible for the following functions:

1. arranging for a host home;

2. making an initial and periodic inspections of the host home; and

3. providing 24-hour oversight and supervision of host home services including providing emergency services and back-up for the scheduled and nonscheduled absences of the contractor;

a. Repealed.

D. Host home contractors are responsible for:

1. assisting with the development of the participant's POC and complying with the provisions of the plan;

2. maintaining and providing data to assist in the evaluation of the participant's personal goals

3. maintaining adequate records to substantiate service delivery and producing such records upon request;

4. undergoing any specialized training deemed necessary by the provider agency, or required by the department, to provide supports in the host home setting; and

5. immediately reporting to the department and applicable authorities any major issues or concerns related to the participant's safety and well-being.

6. - 10. Repealed.

E. ...

F. Host home contractors serving adults are required to be available for daily supervision, support needs or emergencies as outlined in the adult participant's POC based on medical, health and behavioral needs, age, capabilities and any special needs.

F.1. - I.1. ...

2. Separate payment will not be made for the following residential service models if the participant is receiving Host Home services:

2.a. - 3. ...

J. Provider Qualifications

1. All agencies must:

a. have experience in delivering therapeutic services to persons with developmental disabilities;

b. have staff who have experience working with persons with developmental disabilities;

c. screen, train, oversee and provide technical assistance to the host home contractors in accordance with OCDD requirements, including the coordination of an array of medical, behavioral and other professional services appropriate for persons with developmental disabilities; and

d. provide on-going assistance to the host home contractors so that all HCBS requirements are met.

2. Agencies serving children must be licensed by the Department of Children and Family Services as a Class "A" Child Placing Agency.

3. Agencies serving adults must be licensed by the Department of Health and Hospitals as a provider of Substitute Family Care services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2447 (November 2007) , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16315. Intensive Community Supports

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2448 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16317. Nursing Services

A. Nursing services are medically necessary services ordered by a physician and provided by a licensed registered nurse or a licensed practical nurse within the scope of the State's Nurse Practice Act. Nursing services provided in the ROW are an extension of nursing services provided through the Home Health Program covered under the Medicaid State Plan.

1. The services require an individual nursing service plan and must be included in the plan of care.

2. The nurse must submit updates of any changes to the individual's needs and/or the physician's orders to the support coordinator every 60 days.

3. Repealed.

B. Nursing consulting services include assessments and health related training and education for participants and caregivers.

1. - 2. ...

3. The health related training and education service is the only nursing service which can be provided to more than one participant simultaneously. The cost of the service is allocated equally among all participants.

C. Service Requirement. Participants over the age of 21 years must first exhaust all available nursing visits provided under the Medicaid State Plan prior to receiving services through the waiver program.

D. Provider Qualifications

1. In order to participate in the Medicaid Program, the provider agency must possess a current, valid license as a home health agency or, if under the ROW Shared Living Conversion Model, be an enrolled Shared Living Services agency with a current, valid license as a Supervised Independent Living agency.

E. Staffing Requirements

1. ...

2. The RN or the LPN must possess one year of service delivery experience to persons with developmental disabilities defined under the following criteria:

a. full-time experience gained in advanced and accredited training programs (i.e. masters or residency level training programs), which includes treatment services for persons with developmental disabilities;

b. paid, full-time nursing experience in specialized service/treatment settings for persons with developmental disabilities (i.e. intermediate care facilities for persons with developmental disabilities);

c. paid, full-time nursing experience in multi-disciplinary programs for persons with developmental disabilities (i.e. mental health treatment programs for persons with dual diagnosis—mental illness and developmental disabilities); or

d. paid, full-time nursing experience in specialized educational, vocational and therapeutic programs or settings for persons with developmental disabilities (i.e. school special education program).

3. Two years of part-time experience with a minimum of 20 hours per week may be substituted for one year of full-time experience.

4. The following activities do not qualify for the required experience:

a. volunteer nursing experience; or

b. experience gained by caring for a relative or friend with developmental disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2449 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16319. One Time Transitional Services

A. One time transitional services are one-time, set-up services to assist individuals in making the transition from an ICF/DD to their own home or apartment in the community of their choice.

1. - 1.d.iii. Repealed.

B. Allowable transitional expenses may include:

1. nonrefundable security deposits that do not include rental payments;

2. set up fees for utilities;

3. essential furnishings to establish basic living arrangements, including:

a. bedroom and living room furniture;

b. table and chairs;

c. window blinds; and

d. food preparation items and eating utensils;

4. set-up/deposit fee for telephone service;

5. moving expenses; and

6. health and safety assurances including:

a. pest eradication; or

b. one-time cleaning prior to occupancy.

C. Service Limits

1. One time transitional expenses are capped at \$3,000 per person over a participant's lifetime.

D. Service Exclusions

1. One time transitional services may not be used to pay for:

a. housing, rent or refundable security deposits; or

b. furnishings or setting up living arrangements that are owned or leased by a waiver provider.

2. One time transitional services are not available to participants who are receiving Host Home services.

3. One time transitional services are not available to participants who are moving into a family member's home.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2449 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16321. Personal Emergency Response System (PERS)

A. Personal emergency response system (PERS) is a system connected to the participant's telephone that incorporates an electronic device which enables the participant to secure help in an emergency. The device can be worn as a portable "help" button and when activated, a response center is contacted.

B. Participant Qualifications. PERS services are available to individuals who:

1. ...

2. are unable to use other communication systems due to experiencing difficulty in summoning emergency assistance; or

3. ...

C. PERS services includes rental of the electronic device, initial installation, training the participant to use the equipment, and monthly maintenance fees.

D. Service Exclusions

1. Separate payment will not be made for shared living services.

E. Provider Qualifications

1. The provider must be authorized by the manufacturer to install and maintain equipment for personal emergency response systems.

2. The provider shall be in compliance with all applicable federal, state, and local regulations governing the operation of personal emergency response systems including staffing requirements for the response center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2249 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16323. Prevocational Services

A. Prevocational services are activities designed to assist participants in acquiring and maintaining basic work-related skills necessary to acquire and retain meaningful employment. Services should include real and simulated employment tasks to assist in determining their vocational potential. Overall goals include regular community inclusion and development of work skills and habits to improve the participant's employability. Services must be reflective of the participant's POC and focused toward habilitation rather than teaching a specific job skill.

1. - 2.b. ...

B. In the event participants are compensated while receiving prevocational services, the compensation must be in accordance with the United States Fair Labor Standards Act of 1985.

1. If participants are paid in excess of 50 percent of the minimum wage, the provider must, at a minimum:

a. - c. ...

C. The provider is responsible for all transportation from the agency to all vocational sites related to provision of services.

1. Travel training may be included in determining the number of hours of services provided per day for the period of time specified in the participant's POC.

a. Repealed.

D. Service Limits

1. Services shall be limited to no more than eight hours per day, five days per week.

2. Services are based on a one-half day unit of service and time spent at the service site by the participant.

a. the one-half day unit of service requires a minimum of 2.5 hours at the service site by the participant;

b. two one-half day units may be billed in one day if the participant spends a minimum of 5 hours at the service site;

c. any time less than 2.5 hours of service is not billable or payable; and

d. no rounding up of hours is allowed.

3. Participants may receive more than one vocational/habilitative service per day as long as the billing criteria are followed for each service and the requirements for the minimum time spent on site are adhered to.

3.a. - 5.a. Repealed.

E. Service Exclusions

1. Prevocational Services are not available to participants who are eligible to participate in programs funded under the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act.

2. Multiple vocational/habilitative services cannot be provided or billed for during the same hours on the same day as the following services:

a. community living supports;

b. professional services, except those direct contacts needed to develop a behavioral management plan or other type of specialized assessment/plan; or

c. respite care services—out-of-home.

3. Transportation to and from the service site is only payable when a vocational/habilitative service is provided on the same day.

4. Time spent in traveling to and from the prevocational program site shall not be included in the calculation of the total number of service hours provided per day.

a. During travel training, providers must not also bill for the transportation component as this is included in the rate for the number of service hours provided.

5. Transportation-community access shall not be used to transport ROW participants to any prevocational services.

F. Provider Qualifications. Providers must have a current, valid license as an adult day care center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2450 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16325. Professional Services

A. Professional services are direct services to participants, based on need, that may be utilized to increase the individual's independence, participation and productivity in the home, work and community. Service intensity, frequency and duration will be determined by individual need. Professional services must be delivered with the participant present and in accordance with approved POC.

1. - 8.a. Repealed.

B. Professional services include the services provided by the following licensed professionals:

1. occupational therapist;

2. physical therapist;

3. speech therapist;

4. registered dietician;

5. social worker; and

6. psychologist.

C. Professional services may be utilized to:

1. perform assessments and/or re-assessments specific to professional disciplines to accomplish the desired outcomes for the participant and to provide recommendations, treatment, and follow-up;

a. - b. Repealed.

2. provide training or therapy to a participant and/or natural and formal supports necessary to either develop

critical skills that may be self-managed by the participant or maintained according to the participant's needs;

3. intervene in and stabilize a crisis situation (behavioral or medical) that could result in the loss of home and community-based services, including the development, implementation, monitoring, and modification of behavioral support plans;

a. Repealed.

4. provide consultative services and recommendations;

5. provide necessary information to the participant, family, caregivers, and/or team to assist in planning and implementing services or treatment;

6. provide caregiver counseling for the participant's natural, adoptive, foster, or host family members in order to develop and maintain healthy, stable relationships among all caregivers, including family members, to support meeting the needs of the participant;

a. emphasis is placed on the acquisition of coping skills by building upon family strengths; and

b. services are intended to maximize the emotional and social adjustment and well-being of the individual, family, and caregiver; and

7. provide nutritional services, including dietary evaluation and consultation with individuals or their care provider.

a. Services are intended to maximize the individual's nutritional health.

NOTE: Psychologists and social workers will provide supports and services consistent with person-centered practices and Guidelines for Support Planning.

D. Service Exclusions

1. Professional services may only be furnished and reimbursed through ROW when the services are medically necessary, or have habilitative or remedial benefit to the participant.

a. Repealed.

2. Recipients who are participating in ROW and are up to the age of 21 must access these services through the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program.

a. - d. Repealed.

E. Provider Qualifications

1. Enrollment of individual practitioners. Individual practitioners who enroll as providers of professional services must:

a. have a current, valid license from the appropriate governing board of Louisiana for that profession; and

b. possess one year of service delivery experience with persons with developmental disabilities.

c. In addition, the specific service delivered must be consistent with the scope of the license held by the professional.

2. Provider agency enrollment of professional services.

a. The following provider agencies may enroll to provide professional services:

i. a Medicare certified free-standing rehabilitation center;

ii. a licensed home health agency;

iii. a supervised independent living agency licensed by the department to provide shared living services; or

iv. a substitute family care agency licensed by the department to provide host home services.

b. Enrolled provider agencies may provide professional services by one of the following methods:

i. employing the professionals; or

ii. contracting with the professionals.

c. Provider agencies are required to verify that all professionals employed by or contracted with their agency meet the same qualifications required for individual practitioners as stated in §16325.E.1.a-c.

3. All professionals delivering professional services must meet the required one year of service delivery experience as defined by the following:

a. full-time experience gained in advanced and accredited training programs (i.e. master's or residency level training programs), which includes treatment services for persons with developmental disabilities;

b. paid, full-time experience in specialized service/treatment settings for persons with developmental disabilities (i.e. ICFs/DD);

c. paid, full-time experience multi-disciplinary programs for persons with developmental disabilities (i.e. mental health treatment programs for persons with dual diagnosis – mental illness and developmental disability); or

d. paid, full-time experience in specialized educational, vocational, and therapeutic programs or settings for persons with developmental disabilities (i.e. school special education program).

e. Two years of part-time experience with a minimum of 20 hours per week of the qualifying work experience activities may be substituted for one year of full-time experience.

4. The following activities do not qualify for the professional's required service delivery experience:

a. volunteer experience; or

b. experience gained by caring for a relative or friend with developmental disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2450 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16327. Respite Care Services-Out of Home

A. Respite care services-out of home are supports and services provided for the relief of those unpaid caregivers who normally provide care to participants who are unable to care for themselves. These services are furnished on a short-term basis in a licensed respite care center.

1. A licensed respite care facility shall insure that community activities are available to the participant in accordance with the approved POC, including transportation to and from these activities.

a. ...

2. While receiving respite care services, the participant's routine is maintained in order to attend school,

school activities, or other community activities that he/she would typically participate in if not in the center-based respite facility.

B. Service Limits

1. Respite care services are limited to 720 hours per participant per POC year.

2. Requests for an extension of the service limit are subject to the department's established approval process and require proper justification and documentation.

C. Service Exclusions

1. ...

2. Respite care services-out of home may not be billed for participants receiving the following services:

- a. shared living;
- b. companion care; or
- c. host home.
- d. Repealed.

D. Provider Qualifications. The provider must possess a current, valid license as a respite care center issued by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2451 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16329. Shared Living Services

A. Shared Living Services assist the participant in acquiring, retaining and improving the self-care, adaptive and leisure skills needed to reside successfully in a shared home setting within the community. Services are chosen by the participant and developed in accordance with his/her goals and wishes with regard to compatibility, interests, age and privacy in the shared living setting.

1. A shared living services provider delivers supports which include:

- a. 24-hour staff availability;
- b. assistance with activities of daily living included in the participant's POC;
- c. a daily schedule;
- d. health and welfare needs;
- e. transportation;
- f. any non-residential ROW services delivered by the Shared Living services provider; and
- g. other responsibilities as required in each participant's POC.

2. - 3. Repealed.

B. An ICF/DD may elect to permanently relinquish its ICF/DD license and all of its Medicaid Facility Need Review approved beds from the total number of certificate of need (CON) beds for that home and convert it into a shared living waiver home or in combination with other ROW residential options as deemed appropriate in the approved conversion agreement.

1. In order to convert, provider request must be approved by the department and by OCDD.

2. ICF/DD residents who choose transition to a shared living waiver home must also agree to conversion of their residence.

3. If choosing ROW services, persons may select any ROW services and provider(s) based upon freedom of choice.

C. Shared Living Options

1. Shared Living Conversion Option. The shared living conversion option is only allowed for providers of homes which were previously licensed and Medicaid certified as an ICF/DD for up to a maximum of eight licensed and Medicaid-funded beds on October 1, 2009.

a. The number of participants for the shared living conversion option shall not exceed the licensed and Medicaid-funded bed capacity of the ICF/DD on October 1, 2009, or up to six individuals, whichever is less.

b. The ICF/DD used for the shared living conversion option must meet the department's operational, programming and quality assurances of health and safety for all participants.

c. The provider of shared living services is responsible for the overall assurances of health and safety for all participants.

d. The provider of shared living conversion option may provide nursing services and professional services to participants utilizing this residential services option.

2. Shared Living Non-Conversion (New) Option. The shared living non-conversion option is allowed only for new or existing ICF/DD providers to establish a shared living waiver home for up to a maximum of three individuals.

a. The shared living waiver home must be located separate and apart from any ICF/DD.

b. The shared living waiver home must be either a home owned or leased by the waiver participants or a home owned or leased and operated by a licensed shared living provider.

c. The shared living waiver home must meet department's operational, programming and quality assurances for home and community-based services.

d. The shared living provider is responsible for the overall assurances of health and safety for all participants.

D. Service Exclusions

1. ...

2. Payments shall not be made for environmental accessibility adaptations when the provider owns or leases the residence.

3. Participants may receive one-time transitional services only if the participant owns or leases the home and the service provider is not the owner or landlord of the home.

a. - d. Repealed.

4. MFP participants cannot participate in ROW shared living services which serve more than four persons in a single residence.

5. Transportation-community access services cannot be billed or provided for participants receiving shared living services, as this is a component of shared living services.

6. The following services are not available to participants receiving shared living services:

- a. community living supports;
- b. respite care services;
- c. companion care;
- d. host home; or

e. Personal emergency response system.

E. Provider Qualifications. Providers must be approved by the department and have a current, valid license as a Supervised Independent Living agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2452 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16331. Specialized Medical Equipment and Supplies

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2452 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16333. Support Coordination

A. Support coordination services are provided to all ROW participants to assist them in gaining access to needed waiver services, Medicaid State Plan services, as well as needed medical, social, educational and other services, regardless of the funding source for the services. Support coordinators provide information and assistance to waiver participants by directing and managing their services in compliance with the rules and regulations governing case management services.

1. Support coordinators shall be responsible for ongoing monitoring of the provision of services included in the participant's approved POC.

2. Support coordinators shall also participate in the evaluation and re-evaluation of the participant's POC.

B. Support coordinators are responsible for providing assistance to participants who choose the self-direction option with their review of the Self-Direction Employer Handbook and for being available to these participants for on-going support and help with carrying out their employer responsibilities.

C. Provider Qualifications. Providers must have a current, valid license as a case management agency and meet all other requirements for targeted case management services as set forth in LAC 50:XV.Chapter 105 and the Medicaid Targeted Case Management Manual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2453 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16335. Supported Employment

A. Supported Employment provides assistance in an integrated work setting to assist in the achievement and attainment of work related skills and includes on-going support to maintain employment.

1. - 3. Repealed.

B. Supported Employment services include:

1. ...

2. services that assist a participant to develop and operate a micro-enterprise;

a. This service consists of:

i. assisting the participant to identify potential business opportunities;

ii. ...

iii. identification of the supports that are necessary in order for the participant to operate the business; and

iv. ...

3. enclave services which is an employment situation in competitive employment in which a group of eight or fewer workers with disabilities are working at a particular work setting. The workers with disabilities may be disbursed throughout the company and among workers without disabilities or congregated as a group in one part of the business;

4. mobile work crews which is a group of eight or fewer workers with disabilities who perform work in a variety of locations under the supervision of a permanent employment specialist (job coach/supervisor); and

5. all transportation from the agency to all work sites related to provision of the service. The provider is responsible for furnishing the transportation.

C. Service Limits

1. The required minimum number of service hours per day per participant is as follows for:

a. individual placement services, the minimum is one hour;

b. services that assist a participant to develop and operate a micro-enterprise, the minimum is one hour;

c. an enclave, the minimum is 2.5 hours; and

d. a mobile work crew, the minimum is 2.5 hours.

2. Two half-day units may be billed if the participant spends a minimum of five hours at the service site.

3. Participants may receive more than one vocational or habilitative service per day as long as the service and billing requirements for each service are met.

4. Transportation to and from the service site is offered and billable as a component of the support employment service; however, transportation is payable only when a supported employment service is provided on the same day.

D. Service Exclusions

1. ...

2. Any time less than one hour for individual placement and micro-enterprise is not billable or payable.

3. - 3.c. ...

4. Any time less than 2.5 hours for enclaves and mobile crews is not billable or payable.

5. ...

a. Travel training for the purpose of teaching the recipient how to use transportation services may be included in determining the total service numbers hours provided per day, but only for the period of time specified in the POC.

6. - 6.c. ...

7. Services are not available to individuals who are eligible to participate in programs funded under the

Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act.

8. No rounding up of hours is allowed.

E. Provider Qualifications. In order to enroll in the Medicaid Program, providers must have a compliance certificate from the Louisiana Rehabilitation Services as a community rehabilitation program or a current, valid license as an adult day care center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2453 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16337. Transportation-Community Access

A. Transportation-community access services enable participants to gain access to waiver and other community services, activities and resources. These services are necessary to increase independence, productivity, community inclusion and to support self-directed employees benefits as outlined in the participant's POC. Transportation-community access services shall be offered as documented in the participant's approved POC.

1. The participant must be present to receive this service.

2. Whenever possible, the participant must utilize the following resources for transportation:

a. - b. ...

B. Service Limits

1. Community access trips are limited to three per day and must be arranged for geographic efficiency.

2. Greater than three trips per day require approval from the department or its designee.

a. Repealed.

C. Service Exclusions

1. Transportation services offered through ROW shall not replace the medical transportation services covered under the Medicaid State Plan or transportation services provided as a means to get to and from school.

2. Separate payment will not be made for transportation-community access and the following services:

- a. shared living services; or
- b. community living services.

3. Transportation-community access will not be used to transport participants to day habilitation, pre-vocational, or supported employment services.

D. Provider Qualifications. Friends and family members who furnish transportation-community access services to waiver participants must be enrolled as Medicaid Friends and family transportation providers.

1. In order to receive reimbursement for transporting Medicaid recipients to waiver services, family and friends must maintain:

- a. the state minimum automobile liability insurance coverage;
- b. a current state inspection sticker; and
- c. a current valid driver's license.

2. No special inspection by the Medicaid agency will be conducted.

a. - b. Repealed.

3. Documentation of compliance with the three listed requirements for this class of provider must be submitted when enrollment in the Medicaid agency is sought. Acceptable documentation shall be the signed statement of the individual enrolling for payment that all three requirements are met.

a. The statement must also have the signature of two witnesses.

4. Family and friends transportation providers are limited to transporting up to three specific waiver participants.

E. Vehicle Requirements. All vehicles utilized by for profit and non-profit transportation services providers for transporting waiver recipients must comply with all of the applicable state laws and regulations and are subject to inspection by the department or its designee.

E.1. - G. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2454 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

Chapter 165. Self-Direction Initiative

§16501. Self-Direction Service Option

A. The self-direction initiative is a voluntary, self-determination option which allows the waiver participant to coordinate the delivery of designated ROW services through an individual direct support professional rather than through a licensed, enrolled provider agency. Selection of this option requires that the recipient utilize a payment mechanism approved by the department to manage the required fiscal functions that are usually handled by a provider agency.

B. Recipient Responsibilities. Waiver participants choosing the self-direction service option must understand the rights, risks and responsibilities of managing their own care and individual budget. If the participant is unable to make decisions independently, he must have an authorized representative who understands the rights, risks and responsibilities of managing his care and supports within his individual budget. Responsibilities of the participant or authorized representative include:

1. - 2. ...

a. Participants must adhere to the health and welfare safeguards identified by the support team, including:

i. ...

ii. compliance with the requirement that employees under this option must have criminal background checks prior to working with waiver participants;

3. ...

a. This annual budget is determined by the recommended service hours listed in the participant's POC to meet his needs.

b. The participant's individual budget includes a potential amount of dollars within which the participant, or his authorized representative, exercises decision-making responsibility concerning the selection of services and service providers.

C. Termination of Self-Direction Service Option. Termination of participation in the self-direction service

option requires a revision of the POC, the elimination of the fiscal agent and the selection of the Medicaid-enrolled waiver service provider(s) of choice.

1. Voluntary Termination. The waiver participant may choose at any time to withdraw from the self-direction service option and return to the traditional provider agency management of services.

2. Involuntary Termination. The department may terminate the self-direction service option for a participant and require him to receive provider-managed services under the following circumstances:

a. the health or welfare of the participant is compromised by continued participation in the self-direction service option;

b. the participant is no longer able to direct his own care and there is no responsible representative to direct the care;

c. there is misuse of public funds by the participant or the authorized representative; or

d. over three payment cycles in the period of a year, the participant or authorized representative:

i. ...

ii. fails to follow the personal purchasing plan and the POC;

C.2.d.iii. - D. ...

E. Relief coverage for scheduled or unscheduled absences, which are not classified as respite care services, can be covered by other participant-directed providers and the terms can be part of the agreement between the participant and the primary Companion Care provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2455 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

Chapter 167. Provider Participation

§16701. General Provisions

A. ...

1. meet all of the requirements for licensure and the standards for participation in the Medicaid Program as a home and community-based services provider in accordance with state laws and the rules promulgated by the department;

2. comply with the regulations and requirements specified in LAC 50:XXI, Subparts 1 and 13 and the ROW provider manual;

3. comply with all of the state laws and regulations for conducting business in Louisiana, and when applicable, with the state requirements for designation as a non-profit organization; and

4. comply with all of the training requirements for providers of waiver services.

B. Providers must maintain adequate documentation to support service delivery and compliance with the approved POC and provide said documentation upon the department's request.

C. In order for a provider to bill for services, the waiver participant and the direct service worker or professional services practitioner rendering service must be present at the time the service is rendered.

1. Exception. The following services may be provided when the participant is not present:

a. - c. ...

2. All services must be documented in service notes which describe the services rendered and progress towards the participant's personal outcomes and his/her POC.

D. If transportation is provided as part of a waiver service, the provider must comply with all of the state laws and regulations applicable to vehicles and drivers.

E. All services rendered shall be prior approved and in accordance with the POC.

F. Providers, including direct care staff, cannot live in the same residence as the participant, except host home contractors and companion care workers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2455 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16703. Staffing Restrictions and Requirements

A. Payments shall not be made to persons who are legally responsible for the care of the waiver participants which include:

1. parents of minor children;

2. spouses for each other;

3. legal guardians for adults or children with developmental disabilities; or

4. parents for their adult child with developmental disabilities, regardless of the legal status of the adult child.

B. In order to receive payment, relatives must meet the criteria for the provision of the service and the same provider qualifications specified for the service as other providers not related to the participant.

1. Relatives must also comply with the following requirements:

a. become an employee of the participant's chosen waiver provider agency;

b. become a Medicaid enrolled provider agency; or

c. if the self-direction option is selected, relatives must:

i. become an employee of the self-direction participant; and

ii. have a Medicaid provider agreement executed by the fiscal agent as authorized by the Medicaid agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

Chapter 169. Reimbursement

§16901. Reimbursement Methodology

A. Reimbursement for the following services shall be a prospective flat rate for each approved unit of service provided to the waiver participant. One quarter hour (15 minutes) is the standard unit of service, which covers both the service provision and administrative costs for these services:

1. - 3.e....

f. registered dietician;

4. Support Coordination; or

5. Supported Employment:
 - a. individual placement; and
 - b. micro-enterprise.
6. Repealed.

B. The following services are reimbursed at the cost of the adaptation device, equipment or supply item:

1. Environmental Accessibility Adaptations; and
 - a. upon completion of the environmental accessibility adaptations and prior to submission of a claim for reimbursement, the provider shall give the participant a certificate of warranty for all labor and installation work and supply the participant with all manufacturers' warranty certificates;

2. assistive technology/specialized medical equipment and supplies.

3. Repealed.

C. The following services are reimbursed at a per diem rate:

1. ...
2. companion cares; and
3. shared living services.

- a. Per diem rates are established based on the number of individuals sharing the living service module for both shared living non-conversion and shared living conversion services.

D. The following services are reimbursed at a per one-half-day unit of service based on a minimum of 2.5 hours spent on-site by the participant:

1. day habilitation;
2. pre-vocational; and
3. supported employment:
 - a. mobile crew; and
 - b. enclave.

E. ...

F. Nursing services are reimbursed at either an hourly or per visit rate for the allowable procedure codes.

G. ...

H. Transition expenses from an ICF/DD or nursing facility to a community living setting are reimbursed at the cost of the service(s) up to a lifetime maximum rate of \$3,000.

I. - J. ...

K. Effective for dates of service on or after August 1, 2010, the reimbursement for residential options waiver services shall be reduced by 2 percent of the rates in effect on July 31, 2010.

1. The following services shall be excluded from the rate reduction:

- a. personal emergency response services;
- b. environmental accessibility adaption services;
- c. specialized medical equipment and supplies; and
- d. support coordination services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2456 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16903. Direct Support Staff Wages

A. In order to maximize staffing stability and minimize turnover among direct support staff, providers of the

following services furnished under the Residential Options Waiver are required to pay direct support workers an hourly wage that is at least 29 percent (\$1.50) more than the federal minimum wage in effect as of July 23, 2007 or the current federal minimum wage, whichever is higher:

1. community living supports;
2. respite services-out of home;
3. shared living;
4. day habilitation;
5. prevocational services; and
6. supported employment.
7. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2456 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Interim Secretary

1304#072

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services
Non-Rural, Non-State Hospitals
Low Income and Needy Care Collaboration
(LAC 50:V.953)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.953 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates and to provide for a supplemental Medicaid payment to hospitals that enter into an agreement with a state or local governmental entity for the purpose of providing healthcare services to low income and needy patients (*Louisiana Register*, Volume 36, Number 11).

The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to revise the participation requirements for the Low Income and Needy Care Collaboration (*Louisiana Register*, Volume 37, Number

1). This Emergency Rule is being promulgated to continue the provisions of the January 1, 2011 Emergency Rule. This action is being taken to secure new federal funding and to promote the public health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Hospital Services Program.

Effective April 27, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 9. Non-Rural, Non-State Hospitals

Subchapter B. Reimbursement Methodology

§953. Acute Care Hospitals

A. - N.2.b. ...

3. Effective for dates of service on or after January 1, 2011, all parties that participate in supplemental payments under this Section, either as a qualifying hospital by receipt of supplemental payments or as a state or local governmental entity funding supplemental payments, must meet the following conditions during the period of their participation.

a. Each participant must comply with the prospective conditions of participation in the Louisiana Private Hospital Upper Payment Limit Supplemental Reimbursement Program.

b. A participating hospital may not make a cash or in-kind transfer to their affiliated governmental entity that has a direct or indirect relationship to Medicaid payments and would violate federal law.

c. A participating governmental entity may not condition the amount it funds the Medicaid Program on a specified or required minimum amount of low income and needy care.

d. A participating governmental entity may not assign any of its contractual or statutory obligations to an affiliated hospital.

e. A participating governmental entity may not recoup funds from an affiliated hospital that has not adequately performed under the low income and needy care collaboration agreement.

f. A participating hospital may not return any of the supplemental payments it receives under this Section to the governmental entity that provides the non-federal share of the supplemental payments.

g. A participating governmental entity may not receive any portion of the supplemental payments made to a participating hospital under this Section.

4. Each participant must certify that it complies with the requirements of §953.N.3 by executing the appropriate certification form designated by the department for this purpose. The completed form must be submitted to the Department of Health and Hospitals, Bureau of Health Services Financing.

5. Each qualifying hospital must submit a copy of its low income and needy care collaboration agreement to the department.

6. The supplemental payments authorized in this Section shall not be considered as interim Medicaid inpatient payments in the determination of cost settlement amounts for inpatient hospital services rendered by children's specialty hospitals.

O. - Q.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1552 (July 2010), LR 36:2561 (November 2010), LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Center for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Interim Secretary

1304#073

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services—Public-Private Partnerships Reimbursement Methodology (LAC 50:V.1703)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.1703 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing inpatient hospital services to establish supplemental Medicaid payments to non-state owned hospitals in order to encourage them to take over the operation and management of state-owned and operated hospitals that have terminated or reduced services. Participating non-state owned hospitals shall enter into a cooperative endeavor agreement with the department to support this public-provider partnership initiative (*Louisiana Register*, Volume 38, Number 11). The department promulgated an Emergency Rule which amended the provisions governing reimbursement for supplemental

Medicaid payments for inpatient psychiatric hospital services provided by non-state owned hospitals participating in public-private partnerships (*Louisiana Register*, Volume 39, Number 1). The department now proposes to amend the provisions governing reimbursement for Medicaid payments for inpatient services provided by non-state owned major teaching hospitals participating in public-private partnerships which assume the provision of services that were previously delivered and terminated or reduced by a state owned and operated facility.

This action is being taken to promote the health and welfare of Medicaid recipients by maintaining recipient access to much needed hospital services. It is estimated that implementation of this Emergency Rule will not result in programmatic costs to the Medicaid Program for state fiscal year 2012-2013.

Effective April 15, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing Medicaid payments for inpatient hospital services provided by non-state owned hospitals participating in public-private partnerships.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospital Services

Chapter 17. Public-Private Partnerships

§1703. Reimbursement Methodology

A. Payments to qualifying hospitals shall be made on a quarterly basis in accordance with 42 CFR 447.272.

B. Effective for dates of service on or after January 2, 2013, a new Medicaid enrolled non-state acute care hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to provide inpatient psychiatric hospital services to Medicaid and uninsured patients, and which also assumes the operation and management of a formerly state-owned and operated psychiatric hospital shall be paid a per diem rate of \$581.11 per day.

C. Effective for dates of service on or after April 15, 2013, a major teaching hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to provide acute care hospital services to Medicaid and uninsured patients and which assumes providing services that were previously delivered and terminated or reduced by a state owned and operated facility shall be reimbursed as follows.

1. The inpatient reimbursement shall be reimbursed at 95 percent of allowable Medicaid costs. The interim per diem reimbursement may be adjusted not to exceed the final reimbursement of 95 percent of allowable Medicaid costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this

Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1304#007

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services—Public-Private Partnerships Reimbursement Methodology (LAC 50:V.1703)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.1703 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing inpatient hospital services to establish supplemental Medicaid payments to non-state owned hospitals in order to encourage them to take over the operation and management of state-owned and operated hospitals that have terminated or reduced services. Participating non-state owned hospitals shall enter into a cooperative endeavor agreement with the department to support this public-provider partnership initiative (*Louisiana Register*, Volume 38, Number 11). The department promulgated an Emergency Rule which amended the provisions governing reimbursement for supplemental Medicaid payments for inpatient psychiatric hospital services provided by non-state owned hospitals participating in public-private partnerships (*Louisiana Register*, Volume 39, Number 1). This Emergency Rule is being promulgated to continue the provisions of the January 2, 2013 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by maintaining recipient access to much needed hospital services.

Effective May 3, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing supplemental Medicaid payments for inpatient hospital services provided by non-state owned hospitals participating in public-private partnerships.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospital Services

Chapter 17. Public-Private Partnerships

§1703. Reimbursement Methodology

A. Payments to qualifying hospitals shall be made on a quarterly basis in accordance with 42 CFR 447.272.

B. Effective for dates of service on or after January 2, 2013, a new Medicaid enrolled non-state acute care hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to provide inpatient psychiatric hospital services to Medicaid and uninsured

patients, and which also assumes the operation and management of a formerly state-owned and operated psychiatric hospital shall be paid a per diem rate of \$581.11 per day.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Interim Secretary

1304#074

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Medicaid Eligibility—Medically Needy Program Behavioral Health Services (LAC 50:III.2313)

The Department of Health and Hospitals, Bureau of Health Services Financing hereby repeals and replaces all of the rules governing the Medically Needy Program, and adopts LAC 50:III.2313 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule in order to reinstate the Title XIX Medically Needy Program (MNP) and to establish coverage restrictions (*Louisiana Register*, Volume 24, Number 5). All Behavioral health services are restricted from coverage under the Medically Needy Program.

In February 2012, the department adopted provisions in the Medicaid Program to restructure the existing behavioral health services delivery system into a comprehensive service delivery model called the Louisiana Behavioral Health Partnership (LBHP). Certain recipients enrolled in the Medically Needy Program, whose Medicaid eligibility is based solely on the provisions of §1915(i) of Title XIX of the Social Security Act, are eligible to only receive behavioral health services. These recipients have difficulties accessing behavioral health services through the LBHP due to the service restrictions currently in place in the Medically Needy Program.

Therefore, the department promulgated an Emergency Rule which revised the provisions governing the Medically Needy Program in order to include behavioral health coverage for MNP recipients that qualify for the program under the provisions of §1915(i) of Title XIX of the Social Security Act. This Emergency Rule also repealed and replaced all of the Rules governing the Medically Needy Program in order to repromulgate these provisions in a clear and concise manner for inclusion in the *Louisiana Administrative Code* in a codified format (*Louisiana Register*, Volume 38, Number 12).

The department now proposes to amend the December 20, 2012 Emergency Rule to further clarify the provisions governing covered services.

This action is being taken to promote the health and welfare of MNP recipients who are in need of behavioral health services, and to assure their continued access to these services.

Effective April 20, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the December 20, 2012 Emergency Rule governing the Medically Needy Program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part III. Eligibility

Subpart 3. Eligibility Groups and Factors

Chapter 23. Eligibility Groups and Medicaid Programs

§2313. Medically Needy Program

A. The Medically Needy Program (MNP) provides Medicaid coverage when an individual's or family's income and/or resources are sufficient to meet basic needs in a categorical assistance program, but not sufficient to meet medical needs according to the MNP standards.

1. The income standard used in the MNP is the federal Medically Needy Income Eligibility Standard (MNIES).

2. Resources are not applicable to child(C) related MNP cases.

3. MNP eligibility cannot be considered prior to establishing income ineligibility in a categorically related assistance group.

B. MNP Eligibility Groups

1. Regular Medically Needy

a. Children and parents who meet all of the low-income with families and children (lifc) related categorical requirements and whose income is at or below the MNIES are eligible to receive regular MNP benefits. Regular medically needy coverage is only applicable to individuals included in the C-related category of assistance.

b. Individuals in the aged (A), blind (B), or disability (D) related categorical assistance groups cannot receive regular MNP.

c. The certification period for Regular MNP cannot exceed six months.

2. Spend-Down Medically Needy

a. Spend-Down MNP is considered after establishing financial ineligibility in regular MNP or other categorically related Medicaid programs and excess income remains. Allowable medical bills/expenses incurred by the income unit are used to reduce (spend-down) the income to the allowable MNP limits.

b. The following individuals may be considered for spend-down MNP:

- i. individuals or families who meet all of the LIFC related categorical requirements;
- ii. non-institutionalized individuals (A-, B-, or D-related categories); and
- iii. institutionalized individuals or couples (A-, B-, or D-related categories) with Medicare co-insurance whose income has been spent down to the MNIES.

c. The certification period for Spend-Down MNP begins no earlier than the spend-down date and shall not exceed three months.

3. Long Term Care (LTC) Spend-Down MNP

a. Individuals or couples residing in Medicaid LTC facilities, not on Medicare-coinsurance with resources within the limits, but whose income exceeds the special income limits (three times the current Federal Benefit Rate), are eligible for LTC Spend-Down MNP.

4. C-Related Caretaker Relative MNP

a. A qualified relative may be included in a C-related MNP certification as a caretaker relative. There must be at least one minor child applying for or enrolled in Medicaid. A caretaker relative for MNP purposes is an adult who:

- i. is in the LIFC income unit with a minor child;
- ii. is a qualified relative of a child who is eligible for Supplemental Security Income (SSI), Prohibited AFDC Provisions (PAP), or Child Health and Maternity Program (CHAMP); and
- iii. is not eligible for inclusion in the Medicaid certification of a sibling(s) because of income.

b. An essential person may be included with a qualified relative in an MNP caretaker relative certification, but there can be no essential person if there is no qualified relative certified in C-related MNP.

i. Stepparents or individuals who do not meet the above LIFC essential person criteria must qualify for Medicaid as individuals under the A, B, or D categorical assistance groups.

5. Louisiana Behavioral Health Partnership (LBHP) 1915(i) MNP

a. The LBHP Medically Needy Program is considered only for the individuals who meet the level of need requirements of §1915 of Title XIX of the Social Security Act, and who have been determined to be ineligible for other full Medicaid programs, including the Regular MNP and Spend-Down MNP.

b. LBHP 1915(i) MNP recipients are only eligible to receive behavioral health services through the LBHP. They do not qualify for other Medicaid covered services.

c. The certification period for LBHP 1915(i) Regular MNP recipients cannot exceed six months. For the LBHP 1915(i) Spend-Down MNP, the certification period begins no earlier than the spend-down date and shall not exceed three months.

C. The following services are covered in the Medically Needy Program for non-1915(i) recipients:

1. inpatient and outpatient hospital services;
2. intermediate care facilities for persons with developmental disabilities (ICF/DD) services;
3. intermediate care and skilled nursing facility (ICF and SNF) services;

4. physician services, including medical/surgical services by a dentist;

5. nurse midwife services;
6. certified registered nurse anesthetist (CRNA) and anesthesiologist services;
7. laboratory and x-ray services;
8. prescription drugs;
9. Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services;
10. rural health clinic services;
11. hemodialysis clinic services;
12. ambulatory surgical center services;
13. prenatal clinic services;
14. federally qualified health center services;
15. family planning services;
16. durable medical equipment;
17. rehabilitation services (physical therapy, occupational therapy, speech therapy);
18. nurse practitioner services;
19. medical transportation services (emergency and non-emergency);
20. home health services for individuals needing skilled nursing services;
21. chiropractic services;
22. optometry services;
23. podiatry services;
24. radiation therapy; and
25. behavioral health services limited to:
 - a. inpatient and outpatient hospital services;
 - b. emergency medical services;
 - c. physician/psychiatrist services); and
 - d. prescriptions drugs.

D. The following behavioral health services are covered for LBHP 1915(i) MNP recipients:

1. inpatient and outpatient hospital services;
2. emergency medical services;
3. physician/psychiatrist services;
4. treatment by a licensed mental health professional;
5. community psychiatric support and treatment;
6. psychosocial rehabilitation;
7. crisis intervention;
8. case conference [1915(b) services];
9. treatment planning [1915(b) services]; and
10. prescription drugs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Interim Secretary

1304#065

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Medical Transportation Program
Emergency Ambulance Services
Supplemental Payments
(LAC 50:XXVII.327 and 355)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXVII.327 and §355 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing provides reimbursement for emergency ambulance transportation services. The department promulgated an Emergency Rule which established supplemental payments for governmental ambulance providers who render emergency medical transportation services to low income and needy patients in the state of Louisiana (*Louisiana Register*, Volume 37, Number 6). The department promulgated an Emergency Rule which amended the provisions of the July 1, 2011 Emergency Rule to allow supplemental payments for all ambulance providers who render emergency medical transportation services to low income and needy patients (*Louisiana Register*, Volume 37, Number 7). The July 20, 2011 Emergency Rule was amended to allow supplemental payments to providers of air ambulance transportation services (*Louisiana Register*, Volume 37, Number 8). The department promulgated an Emergency Rule which rescinded and replaced the July 1, 2011, the July 20, 2011, and the August 20, 2011 Emergency Rules in order to promulgate clear and concise provisions governing supplemental payments for emergency ambulance services (*Louisiana Register*, Volume 37, Number 9). The department promulgated an Emergency Rule which amended the September 20, 2011 Emergency Rule to clarify the provisions governing supplemental payments for emergency ambulance services (*Louisiana Register*, Volume 37, Number 12). The department promulgated an Emergency Rule which amended the December 20, 2011 Emergency Rule to further clarify the provisions governing supplemental payments for emergency ambulance services (*Louisiana Register*, Volume 38, Number 3).

After consulting with the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services to secure approval of the corresponding State Plan Amendment, the department has now determined that it is necessary to amend the March 20, 2012 Emergency Rule to further clarify the provisions governing supplemental payments for emergency medical transportation services in order to ensure that the administrative Rule is consistent with the approved Medicaid State Plan. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring continued access to emergency ambulance services.

Effective March 20, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the March 20, 2012 Emergency Rule governing supplemental payments for emergency medical transportation services rendered by ambulance providers.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXVII. Medical Transportation Program

Chapter 3. Emergency Medical Transportation

Subchapter B. Ground Transportation

§327. Supplemental Payments for Ambulance Providers

A. Effective for dates of service on or after September 20, 2011, quarterly supplemental payments shall be issued to qualifying ambulance providers for emergency medical transportation services rendered during the quarter.

B. Qualifying Criteria. Ambulance service providers must meet the following requirements in order to qualify to receive supplemental payments. The ambulance service provider must be:

1. licensed by the state of Louisiana;
2. enrolled as a Louisiana Medicaid provider; and
3. a provider of emergency medical transportation or air ambulance services pursuant to 42 CFR 440.170 and a provider of the corresponding Medical and Remedial Care and Services in the approved Medicaid State Plan.
4. Repealed.

C. Payment Methodology. The supplemental payment to each qualifying ambulance service provider will not exceed the sum of the difference between the Medicaid payments otherwise made to these qualifying providers for emergency medical transportation and air ambulance services and the average amount that would have been paid at the equivalent community rate.

D. The supplemental payment will be determined in a manner to bring payments for these services up to the community rate level. The community rate is defined as the average amount payable by commercial insurers for the same services.

E. Supplemental Payment Calculation. The following methodology shall be used to establish the quarterly supplemental payment for ambulance providers.

1. The department shall identify Medicaid ambulance service providers that were qualified to receive supplemental Medicaid reimbursement for emergency medical transportation services and air ambulance services during the quarter.

2. For each Medicaid ambulance service provider identified to receive supplemental payments, the department shall identify the emergency medical transportation and air ambulance services for which the Medicaid ambulance service providers were eligible to be reimbursed.

3. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall calculate the reimbursement paid to the Medicaid ambulance service providers for the emergency medical transportation and air ambulance services identified under Paragraph E.2.

4. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall calculate the Medicaid ambulance service provider's equivalent community rate for each of the Medicaid ambulance service provider's services identified under Paragraph E.2.

5. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall subtract an amount equal to the reimbursement calculation for each of the emergency medical transportation and air ambulance services under Paragraph E.3 from an amount equal to the amount calculated for each of the emergency medical transportation and air ambulance services under Paragraph E.4.

6. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall calculate the sum of each of the amounts calculated for emergency medical transportation and air ambulance services under Paragraph E.5.

7. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall calculate each emergency ambulance service provider's upper payment limit by totaling the provider's total Medicaid payment differential from Paragraph E.6.

8. The department will reimburse providers based on the following criteria.

a. For ambulance service providers identified in Paragraph E.1 located in large urban areas and owned by governmental entities, reimbursement will be up to 100 percent of the provider's average commercial rate calculated in Paragraph E.7.

b. For all other ambulance service providers identified in Paragraph E.1, reimbursement will be up to 80 percent of the provider's average commercial rate calculated in Paragraph E.7.

9. - 17. Repealed.

F. Calculation of Average Commercial Rate. The supplemental payment will be determined in a manner to bring payments for these services up to the average commercial rate level.

1. For purposes of these provisions, the average community rate level is defined as the average amount payable by the commercial payers for the same services.

2. The state will align the paid Medicaid claims with the Medicare fees for each HCPCS or CPT code for the ambulance provider and calculate the Medicare payment for those claims. The state will then calculate an overall Medicare to commercial conversion factor for each ambulance provider by dividing the total amount of the average commercial payments for the claims by the total Medicare payments for the claims. The commercial to Medicare ratio for each provider will be re-determined at least every three years.

G. The supplemental payment will be made effective for emergency medical transportation provided on or after September 20, 2011. This payment is based on the average amount that would have been paid at the equivalent community rate. After the initial calculation for fiscal year 2011-2012, the department will rebase the equivalent community rate using adjudicated claims data for services from the most recently completed fiscal year. This calculation may be made annually, but shall be made no less than every three years.

H. The total amount to be paid by the state to qualified Medicaid ambulance service providers for supplemental Medicaid payments shall not exceed the total of the Medicaid payment differentials calculated under §327.E.6 for all qualified Medicaid ambulance service providers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Subchapter C. Air Transportation

§355. Supplemental Payments for Ambulance Providers

A. Effective for dates of service on or after September 20, 2011, quarterly supplemental payments shall be issued to qualifying ambulance providers for emergency medical air transportation services rendered during the quarter.

B. Qualifying Criteria. Ambulance service providers must meet the following requirements in order to qualify to receive supplemental payments. The ambulance service provider must be:

1. licensed by the state of Louisiana;
2. enrolled as a Louisiana Medicaid provider; and
3. a provider of emergency medical transportation or air ambulance services pursuant to 42 CFR 440.170 and a provider of the corresponding Medical and Remedial Care and Services in the approved Medicaid State Plan.
4. Repealed.

C. Payment Methodology. The supplemental payment to each qualifying ambulance service provider will not exceed the sum of the difference between the Medicaid payments otherwise made to these qualifying providers for emergency medical transportation and air ambulance services and the average amount that would have been paid at the equivalent community rate.

D. The supplemental payment will be determined in a manner to bring payments for these services up to the community rate level. The community rate is defined as the average amount payable by commercial insurers for the same services.

E. Supplemental Payment Calculation. The following methodology shall be used to establish the quarterly supplemental payment for ambulance providers.

1. The department shall identify Medicaid ambulance service providers that were qualified to receive supplemental Medicaid reimbursement for emergency medical transportation services and air ambulance services during the quarter.

2. For each Medicaid ambulance service provider identified to receive supplemental payments, the department shall identify the emergency medical transportation and air ambulance services for which the Medicaid ambulance service providers were eligible to be reimbursed.

3. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall calculate the reimbursement paid to the Medicaid ambulance service providers for the emergency medical transportation and air ambulance services identified under Paragraph E.2.

4. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall calculate the Medicaid ambulance service provider's equivalent community rate for each of the Medicaid ambulance service provider's services identified under Paragraph E.2.

5. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall subtract an amount equal to the reimbursement calculation for each of the emergency medical transportation and air ambulance services under Paragraph E.3 from an amount equal to the amount calculated for each of the emergency medical

transportation and air ambulance services under Paragraph E.4.

6. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall calculate the sum of each of the amounts calculated for emergency medical transportation and air ambulance services under Paragraph E.5.

7. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall calculate each emergency ambulance service provider's upper payment limit by totaling the provider's total Medicaid payment differential from Paragraph B.6.

8. The department will reimburse providers based on the following criteria.

a. For ambulance service providers identified in Paragraph E.1. located in large urban areas and owned by governmental entities, reimbursement will be up to 100 percent of the provider's average commercial rate calculated in Paragraph E.7.

b. For all other ambulance service providers identified in Paragraph E.1., reimbursement will be up to 80percent of the provider's average commercial rate calculated in Paragraph E.7.

9. - 17. Repealed.

F. Calculation of Average Commercial Rate. The supplemental payment will be determined in a manner to bring payments for these services up to the average commercial rate level.

1. For purposes of these provisions, the average commercial rate level is defined as the average amount payable by the commercial payers for the same services.

2. The state will align the paid Medicaid claims with the Medicare fees for each HCPCS or CPT code for the ambulance provider and calculate the Medicare payment for those claims. The state will then calculate an overall Medicare to commercial conversion factor for each ambulance provider by dividing the total amount of the average commercial payments for the claims by the total Medicare payments for the claims. The commercial to Medicare ratio for each provider will be re-determined at least every three years.

G. The supplemental payment will be made effective for air ambulance services provided on or after September 20, 2011. This payment is based on the average amount that would have been paid at the equivalent community rate. After the initial calculation for fiscal year 2011-2012, the department will rebase the equivalent community rate using adjudicated claims data for services from the most recently completed fiscal year. This calculation may be made annually, but shall not be made less often than every three years.

H. The total amount to be paid by the state to qualified Medicaid ambulance service providers for supplemental Medicaid payments shall not exceed the total of the Medicaid payment differentials calculated under §327.E.6 for all qualified Medicaid ambulance service providers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is

responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1304#001

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Nursing Facilities—Reimbursement Rate Reduction (LAC 50:II.20005)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:II.20005 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 13 of the 2012 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for nursing facilities to reduce the per diem rates paid to non-state nursing facilities in order to remove the rebased amount and sunset the 2011-2012 nursing facility rate rebasing (*Louisiana Register*, Volume 38, Number 5).

As a result of a budgetary shortfall in state fiscal year 2013, the department promulgated Emergency Rules which amended the provisions governing the reimbursement methodology for non-state nursing facilities to reduce the reimbursement rates (*Louisiana Register*, Volume 38, Number 7). In anticipation of a budgetary shortfall in state fiscal year 2013 as a result of the reduction in the state's disaster recovery federal medical assistance percentage (FMAP) rate, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for non-state nursing facilities to further reduce the reimbursement rates (*Louisiana Register*, Volume 38, Number 8). This Emergency Rule is being promulgated to continue the provisions of the September 1, 2012 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective May 1, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-state nursing facilities to reduce the reimbursement rates.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part II. Nursing Facilities
Subpart 5. Reimbursement
Chapter 200. Reimbursement Methodology
§20005. Rate Determination
[Formerly LAC 50:VII.1305]

A. - L. ...

M. Effective for dates of service on or after September 1, 2012, the average daily rates for non-state nursing facilities shall be reduced by \$13.69 per day of the average daily rate on file as of August 31, 2012 before the state fiscal year 2013 rebase which will occur on September 1, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:325 (February 2010), repromulgated LR 36:520 (March 2010), amended LR 36:1556 (July 2010), LR 36:1782 (August 2010), LR 36:2566 (November 2010), amended LR 37:902 (March 2011), LR 37:1174 (April 2011), amended LR 37:2631 (September 2011), LR 38:1241 (May 2012), LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Klieber
Interim Secretary

1304#076

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Nursing Facilities—Reimbursement Rate Reduction
(LAC 50:II.20005)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:II.20005 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by House Bill 1 of the 2012 Regular Session of the Louisiana Legislature which states: “The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law.” This Emergency Rule is promulgated in accordance

with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for nursing facilities to reduce the per diem rates paid to non-state nursing facilities in order to remove the rebased amount and sunset the 2011-2012 nursing facility rate rebasing (*Louisiana Register*; Volume 38, Number 5).

As a result of a budgetary shortfall in state fiscal year 2013, the department promulgated Emergency Rules which amended the provisions governing the reimbursement methodology for non-state nursing facilities to reduce the reimbursement rates (*Louisiana Register*, Volume 38, Number 7). In anticipation of a budgetary shortfall in state fiscal year 2013 as a result of the reduction in the state’s disaster recovery Federal Medical Assistance Percentage (FMAP) rate, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for non-state nursing facilities to further reduce the reimbursement rates (*Louisiana Register*, Volume 38, Number 8). This Emergency Rule is being promulgated to continue the provisions of the September 1, 2012 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective May 1, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-state nursing facilities to reduce the reimbursement rates.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part II. Nursing Facilities
Subpart 5. Reimbursement
Chapter 200. Reimbursement Methodology
§20005. Rate Determination
[Formerly LAC 50:VII.1305]

A. - M. ...

N. Effective for dates of service on or after September 1, 2012, the average daily rates for non-state nursing facilities shall be reduced by \$1.91 per day of the average daily rate on file as of August 31, 2012 after the state fiscal year 2013 rebase which will occur on September 1, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:325 (February 2010), repromulgated LR 36:520 (March 2010), amended LR 36:1556 (July 2010), LR 36:1782 (August 2010), LR 36:2566 (November 2010), amended LR 37:902 (March 2011), LR 37:1174 (April 2011), amended LR 37:2631 (September 2011), LR 38:1241 (May 2012), LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and

Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Interim Secretary

1304#075

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Outpatient Hospital Services—Public-Private Partnerships Reimbursement Methodology (LAC 50:V.6703)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.6703 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing outpatient hospital services to establish supplemental Medicaid payments to non-state owned hospitals in order to encourage them to take over the operation and management of state-owned hospitals that have terminated or reduced services (*Louisiana Register*, Volume 38, Number 11). Participating non-state owned hospitals shall enter into a cooperative endeavor agreement with the department to support this public-private partnership initiative. The department promulgated an Emergency Rule which amended the provisions of the November 1, 2012 Emergency Rule to revise the reimbursement methodology in order to correct the federal citation (*Louisiana Register*, Volume 39, Number 3). The department now proposes to amend the provisions governing reimbursement for Medicaid payments for outpatient services provided by non-state owned major teaching hospitals participating in public-private partnerships which assume the provision of services that were previously delivered and terminated or reduced by a state owned and operated facility.

This action is being taken to promote the health and welfare of Medicaid recipients by maintaining recipient access to much needed hospital services. It is estimated that implementation of this Emergency Rule will not result in programmatic costs to the Medicaid Program for state fiscal year 2012-2013.

Effective April 15, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing Medicaid payments for outpatient

hospital services provided by non-state owned hospitals participating in public-private partnerships.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 5. Outpatient Hospital Services

Chapter 67. Public-Private Partnerships

§6703. Reimbursement Methodology

A. Payments to qualifying hospitals shall be made on a quarterly basis in accordance with 42 CFR 447.321.

B. Effective for dates of service on or after April 15, 2013, a major teaching hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to provide acute care hospital services to Medicaid and uninsured patients, and which assumes providing services that were previously delivered and terminated or reduced by a state owned and operated facility shall be reimbursed as follows.

1. Outpatient Surgery. The reimbursement amount for outpatient hospital surgery services shall be an interim payment equal to the Medicaid fee schedule amount on file for each service, and a final reimbursement amount of 95 percent of allowable Medicaid cost.

2. Clinic Services. The reimbursement amount for outpatient clinic services shall be an interim payment equal to the Medicaid fee schedule amount on file for each service, and a final reimbursement amount of 95 percent of allowable Medicaid cost.

3. Laboratory Services. The reimbursement amount for outpatient clinical diagnostic laboratory services shall be the Medicaid fee schedule amount on file for each service.

4. Rehabilitative Services. The reimbursement amount for outpatient clinic services shall be an interim payment equal to the Medicaid fee schedule amount on file for each service, and a final reimbursement amount of 95 percent of allowable Medicaid cost.

5. Other Outpatient Hospital Services. The reimbursement amount for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees shall be an interim payment equal to 95 percent of allowable Medicaid cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1304#006

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Pharmacy Benefits Management Program
Medication Administration—Influenza Vaccinations
(LAC 50:XXIX.123, 991, and 993)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXIX.123 and §991 and adopts §993 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the Pharmacy Benefits Management Program to allow payment for the administration of H1N1 vaccine by qualified Medicaid enrolled pharmacists (*Louisiana Register*, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions governing the Pharmacy Benefits Management Program to allow payment for the administration of the influenza vaccine for all Medicaid recipients, and to provide reimbursement for the cost of the influenza vaccine for Medicaid recipients 19 years of age and older (*Louisiana Register*, Volume 36, Number 12). This Emergency Rule is being promulgated to continue the provisions of the January 1, 2011 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by facilitating access to the influenza vaccine.

Effective April 27, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Pharmacy Benefits Management Program to allow reimbursement for the influenza vaccine and administration of the vaccine.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXIX. Pharmacy

Chapter 1. General Provisions

§123. Medication Administration

A. Influenza Vaccine Administration. The department shall provide coverage for administration of the influenza vaccine by a qualified pharmacist when:

1. the pharmacist has been credentialed by the Louisiana Board of Pharmacy to administer medications; and
2. the pharmacist is Medicaid enrolled.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1783 (August 2010), amended LR 39:

Chapter 9. Methods of Payment

Subchapter H. Vaccines

§991. Vaccine Administration Fees

A. ...

B. Effective for dates of service on or after January 1, 2011, the reimbursement for administration of the influenza

vaccine for all recipients shall be reimbursed at \$15.22 for subcutaneous or intramuscular injection, \$10.90 for nasal/oral administration or billed charges, whichever is the lesser amount. This fee includes counseling, when performed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1783 (August 2010), amended LR 39:

§993. Vaccine Reimbursement

A. Effective for dates of service on or after January 1, 2011, the influenza vaccine for recipients aged 19 and over shall be reimbursed at 90 percent of the 2009 Louisiana Medicare average sales price (ASP) allowable or billed charges, whichever is the lesser amount.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Interim Secretary

1304#077

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Professional Services Program—Fluoride Varnish
Applications (LAC 50:IX.901-905 and 15105)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:IX.901-905 and §15105 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the Professional Services Program in order to establish Medicaid reimbursement for fluoride varnish application services rendered by qualified providers in a physician office setting (*Louisiana Register*, Volume 37, Number 11). The department anticipates that coverage of this service will reduce and/or prevent future oral health problems that could have a negative effect on the overall health of children and may reduce the Medicaid cost associated with the treatment of such oral health conditions.

The department promulgated an Emergency Rule which amended the December 1, 2011 Emergency Rule to clarify the general provisions and scope of services governing fluoride varnish applications (*Louisiana Register*, Volume

38, Number 1). This Emergency Rule is being promulgated to continue the provisions of the January 20, 2012 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients.

Effective May 18, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Professional Services Program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part IX. Professional Services Program

Subpart 1. General Provisions

Chapter 9. Fluoride Varnish Application Services

§901. General Provisions

A. Effective for dates of service on or after December 1, 2011, the department shall provide Medicaid coverage of fluoride varnish application services to recipients from six months through five years of age.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§903. Scope of Services

A. Fluoride varnish application services performed in a physician office setting shall be reimbursed by the Medicaid Program when rendered by the appropriate professional services providers.

B. Fluoride varnish applications may be covered once every six months per Medicaid recipient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§905. Provider Participation

A. The entity seeking reimbursement for fluoride varnish application services must be an enrolled Medicaid provider in the Professional Services Program. The following Medicaid enrolled providers may receive reimbursement for fluoride varnish applications:

1. physicians;
2. nurse practitioners; and
3. physician assistants.

B. The following providers who have been deemed as competent to perform the service by the certified physician may perform fluoride varnish application services in a physician office setting:

1. the appropriate dental providers;
2. physicians;
3. physician assistants;
4. nurse practitioners;
5. registered nurses; or
6. licensed practical nurses.

C. Professional service providers shall review the Smiles for Life training module for fluoride varnish and successfully pass the post assessment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Subpart 15. Reimbursement

Chapter 151. Reimbursement Methodology

Subchapter A. General Provisions

§15105. Fluoride Varnish Application Services

A. Effective for dates of service on or after December 1, 2011, the Medicaid Program shall provide reimbursement for fluoride varnish application services rendered by qualified health care professionals in a physician office setting.

B. Reimbursement for fluoride varnish application services shall be a flat fee based on the appropriate HCPCS code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Interim Secretary

1304#078

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Rural Health Clinics—Fluoride Varnish Applications
(LAC 50:XI.16301 and 16701)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XI.16301 and §16701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing rural health clinics (RHCs) to provide Medicaid reimbursement for diabetes self-management training services and to reorganize the existing provisions governing provider participation and services in a more clear and concise manner in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 37, Number 9). The department promulgated an Emergency Rule which amended the September 20, 2011 Rule to adopt provisions for the coverage of fluoride varnish application services rendered to Medicaid recipients (*Louisiana Register*, Volume 37, Number 11). The department promulgated an Emergency Rule which amended the December 1, 2011 Emergency Rule

to clarify the provisions governing the scope of services for fluoride varnish applications (*Louisiana Register*, Volume 38, Number 1). This Emergency Rule is being promulgated to continue the provisions of the January 20, 2012 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients.

Effective May 18, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing rural health clinics.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XI. Clinic Services

Subpart 15. Rural Health Clinics

Chapter 163. Services

§16301. Scope of Services

A. - B.1. ...

C. Effective December 1, 2011, the department shall provide coverage for fluoride varnish applications performed in the RHC. This service shall be limited to recipients from six months through five years of age. Fluoride varnish applications may be covered once every six months per Medicaid recipient.

1. Fluoride varnish applications shall be reimbursed when performed in the RHC by:

- a. the appropriate dental providers;
- b. physicians;
- c. physician assistants;
- d. nurse practitioners;
- e. registered nurses; or
- f. licensed practical nurses.

2. All participating staff shall review the *Smiles for Life* training module for fluoride varnish and successfully pass the post assessment. All staff involved in the varnish application must be deemed as competent to perform the service by the RHC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1904 (October 2006), repromulgated LR 32:2267 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2631 (September 2011), LR 39:

Chapter 167. Reimbursement Methodology

§16701. Prospective Payment System

A. - B.3.a. ...

4. Effective for dates of service on or after December 1, 2011, the Medicaid Program shall include coverage for fluoride varnish applications in the RHC encounter rate.

a. Fluoride varnish applications shall only be reimbursed to the RHC when performed on the same date of service as an office visit or preventative screening. Separate encounters for fluoride varnish services are not permitted and the application of fluoride varnish does not constitute an encounter visit.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1905 (October 2006), repromulgated LR 32:2267 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2632 (September 2011), LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Interim Secretary

1304#079

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

State Children's Health Insurance Program
LaCHIP Affordable Plan Benefits Administration
(LAC 50:III.20501, 20505 and 20507)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:III.20501 and §§20505-20507 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XXI of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions to implement phase five of the Louisiana Children's Health Insurance Program (LaCHIP) as a stand-alone program under Title XXI provisions to provide coverage to uninsured children whose family income is from 200 percent up to 250 percent of the federal poverty level (*Louisiana Register*, Volume 34, Number 4).

The department promulgated an Emergency Rule which amended the April 2008 Rule in order to transfer the administration of health care services covered under the LaCHIP Affordable Plan (Phase 5) to the health plans participating in the BAYOU HEALTH Program, and the administration of behavioral health services to the statewide management organization in the Louisiana Behavioral Health Partnership (*Louisiana Register*, Volume 38, Number 12).

This Emergency Rule also revised the cost sharing provisions in order to remove the co-payment, co-insurance, and deductible requirements since they will no longer be attributable to the LaCHIP Affordable Plan program. Only the monthly premium per household shall apply. This Emergency Rule is being promulgated to continue the provisions of the January 1, 2013 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs, and to promote the health and welfare of LaCHIP Affordable Plan recipients.

Effective May 2, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the LaCHIP Affordable Plan in order to transfer the administration of these services to the BAYOU HEALTH Program and the Louisiana Behavioral Health Partnership.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part III. Eligibility

Subpart 11. State Children’s Health Insurance Program

Chapter 205. Louisiana Children’s Health Insurance Program (LaCHIP)—Phase V

§20501. General Provisions

A. ...

B. The department retains the oversight and management of this LaCHIP expansion with health care benefits provided through the BAYOU HEALTH Program and behavioral health services provided through the Louisiana Behavioral Health Partnership (LBHP).

C. Phase five is a cost-sharing program. Families who are enrolled in phase five of LaCHIP will be responsible for paying premiums.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XXI of the Social Security Act.

HISTORICAL NOTE: Repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:660 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§20505. Covered Services

A. Children covered in phase five of the LaCHIP expansion shall receive health care benefits through an array of covered services offered by health plans participating in the BAYOU HEALTH Program, and behavioral health services administered by the statewide management organization under the LBHP. The following services shall be included:

1. - 8. ...

9. inpatient and outpatient behavioral health services other than those listed in any other provisions of §20503:

9.a. - 10. ...

11. nursing care services;
a. Repealed.

12. ...

13. inpatient substance abuse treatment services, including residential substance abuse treatment services:

a. Inpatient admissions must be pre-certified. Emergency services are covered if, upon review, presentation is determined to be life-threatening, resulting in admission to inpatient, partial hospital or intensive outpatient level of care;

b. ...

14. outpatient substance abuse treatment services:

a. all services must be pre-certified;

b. ...

15. case management services;

a. Repealed.

16. - 16.a. ...

17. hospice care;

a. Repealed.

18. medical transportation; and

a. Repealed.

19. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XXI of the Social Security Act.

HISTORICAL NOTE: Repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:660 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§20507. Cost Sharing

A. Phase five of LaCHIP is a cost-sharing program with premiums limited to no more than 5 percent of the family’s annual income.

B. The following cost-sharing criteria shall apply.

1. - 1.a. ...

2. - 3.e. Repealed.

C. Non-payment of premiums may result in disenrollment from LaCHIP. Recipients shall be allowed a 60-day grace period prior to disenrollment for non-payment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XXI of the Social Security Act.

HISTORICAL NOTE: Repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:661 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Interim Secretary

1304#080

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Office of Public Health**

Review and Approval of Plans and Specifications for
Issuance of a Permit for a Potable Water Supply
(LAC 51:XII.105)

The state health officer, acting through the Department of Health and Hospitals, Office of Public Health (DHH, OPH), pursuant to the rulemaking authority granted by R.S. 40:4(A)(8) and (13), hereby adopts the following Emergency Rule to prevent an imminent peril to the public welfare. This rule is being promulgated in accordance with the Administrative Procedure Act (R.S. 49:950 et seq.).

The state health officer, through DHH, OPH, finds it necessary to promulgate an Emergency Rule effective April 20, 2013 and shall remain in effect for the maximum period allowed under the Act. The agency intends to propose changes to LAC 51:XII through regular rulemaking after stakeholder deliberations are completed.

Title 51
PUBLIC HEALTH—SANITARY CODE
Part XII. Water Supplies

Chapter 1. General

§105. Permit Requirements for a Potable Water Supply
[formerly paragraph 12:002-2]

A. - C. ...

D. The review and approval of plans and specifications submitted for issuance of a permit, will be made in accordance with the "Ten-State Standards" and the *Louisiana Water Well Rules, Regulations, and Standards* (LAC 56:I), plus any additional requirements of the state health officer as set forth in this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 (A)(8) and R.S. 40:5 (5)(6)(7)(17)(19).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1320 (June 2002), amended LR 39:

Kathy H. Kliebert
Interim Secretary

1304#047

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections
Uniform Construction Code Council

Uniform Construction Code
(LAC 55:VI.301)

The Department of Public Safety and Corrections, Office of the State Fire Marshal, Louisiana State Uniform Construction Code Council (LSUCCC) has exercised the emergency provision in accordance with R.S. 49:953(B), the Administrative Procedure Act, to amend LAC 55:VI.301 in the State Uniform Construction Code as authorized by R.S. 40:1730.26 and R.S. 40:1730.28. This Emergency Rule rescinds and replaces the Emergency Rule that became effective January 1, 2013(LR 39:01) and shall become effective March 26, 2013 and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Public Safety and Corrections, Office of State Fire Marshal, Louisiana State Uniform Construction Code Council (LSUCCC), have found a need to amend, supplement and expand certain provisions of and to readopt the rules relative to §301.2.1.1, R301.2.1.4, Table 602.3(1), R802.11 and Table 802.11 of the International Residential Code (IRC) and §903.2.1.2 of the International Building Code (IBC) of the State Uniform Construction Code. §301.2.1.1 Design Criteria provides for wind design requirements in the 2012 IRC. 2012 IRC Figure R301.2(4)A as published by the International Code Council contains current design data which will significantly change the design for wind speeds in Louisiana. Section R301.2.1.4 Exposure Category, Table 602.3(1) Fastening Requirements, Section 802.11 Roof tie downs, and Table 802.11 are subsequent sections that are adopted in conjunction with Figure R 301.2(4)A. Together they will allow for new design criteria. This new information and design criteria will provide significant savings to the public and provide the

latest data in the construction of one- and two- family dwellings in Louisiana. Due to long design timeframes, the Louisiana State Uniform Code Council intends to adopt these emergency changes to prevent delays in design and to help provide economic development. The current adopted wind map of the IRC in §301.2.1.1, addressing wind design, impacts the cost of construction. The current requirements are possibly delaying the design, permitting, and completion of one- and two- family dwellings. Adoption of the Emergency Rule will allow more reasonable wind provisions to be applied to these structures which ensures the health, safety and welfare of the public. §903.2.1.2 Group A-2 (2.) provides for an occupant load of 100 in the 2012 IBC. Raising the allowable occupant load to 300 will allow many small additions and new construction to be exempt from encumbering the cost of sprinkling the structure. The public welfare dictates that these changes be implemented immediately because of the long design time frames and to prevent unnecessary delays in design. Adoption of this emergency rule will encourage more owners and developers to expand existing facilities or construct new facilities and ensure the health, safety and welfare of the public. Section 1018.5 Air movement in corridors was previously adopted and published but was inadvertently left out during publication. This is not a new adoption. This is for correction only.

Adopted March 19, 2013, effective March 26, 2013.

Title 55

PUBLIC SAFETY

Part VI. Uniform Construction Code

Chapter 3. Adoption of the Louisiana State Uniform Construction Code

§301. Louisiana State Uniform Construction Code

A. - A.1.a.ii. ...

iii. Amend Chapter 9 to adopt and amend 2012 International Building Code Section 903.2.1.2 Group A-2 (2.) The fire area has an occupant load of 300 or more.

iv. Amend Chapter 10, Section 1018.5 Air Movement in corridors. Corridors that require protection under Table 1018.1—Corridor Fire-Resistance Rating, shall not serve as supply, return, exhaust, relief or ventilation air ducts.

v. Amend chapter 16, section 1609.1.2, exceptions 1. Wood structural panels with a minimum thickness of 7/16 inch (11.1 mm) and maximum panel span of 8 feet (2438 mm) shall be permitted for opening protection in one- and two-story buildings. Panels shall be precut so that they shall be attached to the framing surrounding the opening containing the product with the glazed opening. Panels shall be predrilled as required for the anchorage method and shall be secured with the attachment hardware provided. Attachments shall be designed to resist the components and cladding loads determined in accordance with the provisions of ASCE 7, with corrosion-resistant attachment hardware provided and anchors permanently installed on the building. Attachment in accordance with Table 1609.1.2 with corrosion-resistant attachment hardware provided and anchors permanently installed on the building is permitted for buildings with a mean roof height of 45 feet (13,716 mm) or less where wind speeds do not exceed 140 mph (63 m/s).

vi. Amend chapter 16, section 1613.1, Scope. Every structure, and portion thereof, including nonstructural components that are permanently attached to structures and their supports and attachments, shall be designed and constructed to resist the effects of earthquake motions in accordance with ASCE7, excluding Chapter 14 and Appendix 11A. The seismic design category for a structure is permitted to be determined in accordance with Section 1613 or ASCE 7-10. Figure 1613.5(1) shall be replaced with ASCE 7-10 Figure 22-1. Figure 1613.5(2) shall be replaced with ASCE 7-10 Figure 22-2.

vii. Amend chapter 23, section 2308.2, exceptions 4. Wind speeds shall not exceed 110 miles per hour (mph) (48.4m/s) (3-second gust) for buildings in exposure category B.

2. - 3. ...

a. *International Residential Code*, 2009 Edition, not including Parts I-Administrative, V-Mechanical, VII-Plumbing and VIII-Electrical. The applicable standards referenced in that code are included for regulation of construction within this state. The enforcement of such standards shall be mandatory only with respect to new construction, reconstruction, additions to homes previously built to the International Residential Code, and extensive alterations. Appendix J, Existing Buildings and Structures, may be adopted and enforced only at the option of a parish, municipality, or regional planning commission. Adopt and amend 2012 IRC section R301.2.1. Part IV-Energy Conservation of the latest edition of the International Residential Code is hereby amended to require that supply and return ducts be insulated to a minimum of R-6. Furthermore, 2012 IRC R301.2.1.1 (Design Criteria) shall be amended as follows and shall only apply to the International Residential Code:

i. Adopt and amend 2012 IRC section R301.2.1.1 (Design Criteria); R301.2.1.1 Wind limitations and wind design required.

(a). The wind provisions of this code shall not apply to the design of buildings where the basic wind speed from Figure R301.2(4)A equals or exceeds 110 miles per hour (49 m/s). Exceptions:

(i). for concrete construction, the wind provisions of this code shall apply in accordance with the limitations of Sections R404 and R611;

(ii). For structural insulated panels, the wind provisions of this code shall apply in accordance with the limitations of Section R613. In regions where the basic wind speed shown on Figure R301.2(4)A equals or exceeds 110 miles per hour (49 m/s), the design of buildings for wind loads shall be in accordance with one or more of the following methods:

[a]. AF&PA Wood Frame Construction Manual (WFCM); or

[b]. ICC Standard for Residential Construction in High-Wind Regions (ICC 600); or

[c]. ASCE Minimum Design Loads for Buildings and Other Structures (ASCE 7); or

[d]. AISI Standard for Cold-Formed Steel Framing—Prescriptive Method For One- and Two-Family Dwellings (AISI S230); or

[e]. International Building Code.

(b). The elements of design not addressed by the methods in Items 1 through 5 shall be in accordance with the provisions of this code. When ASCE 7 or the *International Building Code* is used for the design of the building, the wind speed map and exposure category requirements as specified in ASCE 7 and the *International Building Code* shall be used.

ii. Adopt and amend 2012 IRC section R301.2.1.2 Protection of Openings.

(a). Exterior glazing in buildings located in windborne debris regions shall be protected from windborne debris. Glazed opening protection for windborne debris shall meet the requirements of the Large Missile Test of ASTM E 1996 and ASTM E 1886 referenced therein. The applicable wind zones for establishing missile types in ASTM E 1996 are shown on Figure R301.2(4)C. Garage door glazed opening protection for windborne debris shall meet the requirements of an *approved* impact-resisting standard or ANSI/DASMA115.

(b). Exception: wood structural panels with a minimum thickness of 7/16 inch (11 mm) and a maximum span of 8 feet (2438 mm) shall be permitted for opening protection in one- and two-story buildings. Panels shall be precut and attached to the framing surrounding the opening containing the product with the glazed opening. Panels shall be predrilled as required for the anchorage method and shall be secured with the attachment hardware provided. Attachments shall be designed to resist the component and cladding loads determined in accordance with either Table R301.2(2) or ASCE 7, with the permanent corrosion-resistant attachment hardware provided and anchors permanently installed on the building. Attachment in accordance with Table R301.2.1.2 is permitted for buildings with a mean roof height of 33 feet (10 058 mm) or less where wind speeds do not exceed 130 miles per hour (58 m/s)

iii. Adopt 2012 IRC Figure R301.2(4)A and delete Figure R301.2(4)B and Figure R301.2(4)C

iv. Adopt 2012 IRC section R301.2.1.4 Exposure Category

b. - c.ii. ...

iii. Adopt 2012 IRC Table 602.3 (1) Fastening Requirements

iv. Adopt 2012 IRC section R802.11 Roof tie-down

v. Adopt 2012 IRC Table R802.11 Rafters

vi. Substitute Chapter 11, Energy Efficiency of the 2006 IRC, in lieu of Chapter 11 Energy Efficiency of the 2009 IRC.

4.a. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with La. R.S. 40:1730.26 and La. R.S. 40:1730.28.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:291 (February 2007), amended LR 34:93 (January 2008), LR 34: 883 (May 2008), LR 34:2205 (October 2008), LR 35:1904 (September 2009), LR 36:2574 (November 2010), effective January 1, 2011, LR 37:601 (February 2011), LR 37:913 (March 2011), repromulgated LR 37:2187 (July 2011), repromulgated LR 37:2726 (September 2011), LR 37:3065

(October 2011); LR 38:1994 (August 2012), amended LR 39:01(January 2013), amended LR 39:

H. "Butch" Browning
State Fire Marshal

1304#005

DECLARATION OF EMERGENCY

Department of State Elections Division

Voter Registration at Mandatory Voter Registration Agencies (LAC 31:II.Chapter 4)

The Department of State, pursuant to the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under the authority of R.S. 18:116, R.S. 36:742 and 42 U.S.C. §1973gg et seq., has adopted LAC 31:II.Chapter 4 on an emergency basis in an effort to comply with the permanent injunction entered on January 23, 2013, by the United States District Court, Eastern District of Louisiana, in the matter of "Scott, et al. v. Schedler, et al." (Docket No. 11-926), directing the secretary of state to implement "policies and procedures" no later than March 15, 2013, as to each program for which the secretary of state has not achieved substantial compliance with the provisions of the National Voter Registration Act, 42 U.S.C. §1973gg et seq., as construed by the district court in the referenced proceeding. The district court's ruling is under review by the United States Court of Appeals for the Fifth Circuit, and if reversed may necessitate subsequent repeal or amendment of these rules.

This Emergency Rule shall become effective on March 14, 2013, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until final rules are promulgated in accordance with law, whichever occurs first.

Title 31 ELECTIONS

Part II. Voter Registration and Voter Education Chapter 4. Voter Registration at Mandatory Voter Registration Agencies in the State that Provide Public Assistance or Provide State-funded Programs Primarily Engaged in Providing Services to Persons with Disabilities

§401. Objective

A. The objective of these rules is to provide procedures to implement the provisions of the National Voter Registration Act, 42 U.S.C. §1973gg et seq., (NVRA), as interpreted by the United States District Court for the Eastern District of Louisiana in "Scott, et al. v. Schedler, et al." (Docket No. 11-926), in a permanent injunction dated January 23, 2013, at those agencies designated by the state as voter registration agencies which include all offices in the state that provide public assistance and all offices in the state that provide state-funded programs primarily engaged in providing services to persons with disabilities, hereinafter referred to as "mandatory voter registration agencies," within the intent of 42 U.S.C. §1973gg-5.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:116, R.S. 36:742, 42 U.S.C. §1973gg et seq., and the Permanent Injunction issued in "Scott, et al. v. Schedler, et al." (Docket No. 11-926), United States District Court, Eastern District of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:

§403. Definitions

Department—an office, agency, or other instrumentality of the executive branch that contains mandatory voter registration agencies.

Employee—a full-time or part-time classified or unclassified employee, official, or any independent contractor of any mandatory voter registration agency as defined in this Section.

Mandatory Voter Registration Agency or Mandatory Voter Registration Agencies—all offices or agencies in the state that provide public assistance or that provide state-funded programs primarily engaged in providing services to persons with disabilities.

Site—the physical location where voter registration is conducted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:116, R.S. 36:742, 42 U.S.C. §1973gg et seq., and the Permanent Injunction issued in "Scott, et al. v. Schedler, et al." (Docket No. 11-926), United States District Court, Eastern District of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:

§405. Services Made Available

A. At each mandatory voter registration agency, the following services shall be made available:

1. distribution of the state voter registration application with each application for service or assistance, and with each recertification, renewal, or change of address form relating to such service or assistance, whether the application, recertification, renewal, or change of address form is in paper or electronic format;

2. provide a declaration form with each application, recertification, renewal, or change of address form as described in 42 U.S.C. §1973gg-5(a)(6)(B);

3. provide each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the voter registration application as is provided by the mandatory voter registration agency with regard to the completion of its own forms, unless the applicant refuses such assistance;

4. accept completed voter registration applications for transmittal to the appropriate parish registrar of voters;

5. accept any change of name submitted by a registrant which shall serve as a notification of change of name for voter registration unless the registrant states at the time of submitting the change that the change is not for voter registration purposes. The transmittal procedure shall be handled in the same manner as voter registration applications.

B. If the mandatory voter registration agency provides services to a person with a disability at the person's home, the agency shall provide the services described in Subsection A at the person's home.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:116, R.S. 36:742, 42 U.S.C. §1973gg et seq., and the Permanent Injunction issued in "Scott, et al. v. Schedler, et al." (Docket No. 11-926), United States District Court, Eastern District of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:

§407. Declaration Form

A. Each mandatory voter registration agency shall provide a declaration form with each voter registration application that is distributed with each application for service or assistance, and with each recertification, renewal, or change of address form relating to such service or assistance.

B. The declaration form shall include the following, in order:

1. the question:

“If you are not registered to vote where you live now, would you like to apply to register to vote here today?”;

2. boxes for the applicant to check to indicate whether the applicant would like to register to vote or declines to register to vote (failure to check either box being deemed to constitute a declination to register to vote for purposes of providing assistance in completion of the registration application form), together with the statement (in close proximity to the boxes and in prominent type):

“IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.”;

3. if the mandatory voter registration agency provides public assistance, the statement:

“Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.”;

4. the statement:

“If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private.”;

5. the statement:

“For assistance in completing the voter registration application form outside our office, contact _____ at _____.”;

a. the first blank shall be filled in with the department’s name and the second blank shall be filled in with the department’s telephone number or other contact information;

6. the statement:

“If completed outside our office, this declaration form and your completed voter registration application form (if you filled one out) should be returned to _____ or _____.”;

a. the first blank shall filled in with the department’s local office physical location and the second blank shall be filled in with the department’s mailing address used to accept applications for service or assistance, recertifications, renewals, and changes of address forms; and

7. the statement:

“If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with the Louisiana Secretary of State, Commissioner of Elections, P.O. Box 94125, Baton Rouge, LA 70804-9125, Telephone (toll-free) 1-800-883-2805.”

C. Completed declaration forms shall be retained by the mandatory voter registration agency for at least 24 months.

D. No information relating to a declination to register to vote in connection with an application made at a mandatory voter registration agency may be used for any purpose other than voter registration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:116, R.S. 36:742, 42 U.S.C. §1973gg et seq., and the Permanent Injunction issued in “Scott, et al. v. Schedler, et al.” (Docket No. 11-926), United States District Court, Eastern District of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:

§409. Transmittal of Voter Registration Applications Accepted at Mandatory Voter Registration Agencies

A. Completed voter registration applications accepted by mandatory voter registration agencies shall be transmitted to the appropriate registrar of voters no later than five days after date of acceptance. If a registration application is accepted within five days before the last day for registration, the mandatory voter registration agency shall transmit the completed voter registration application to the appropriate registrar of voters at the conclusion of each business day.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:116, R.S. 36:742, 42 U.S.C. §1973gg et seq., and the Permanent Injunction issued in “Scott, et al. v. Schedler, et al.” (Docket No. 11-926), United States District Court, Eastern District of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:

§411. Qualified Employees at Mandatory Voter Registration Agencies

A. Qualifications. In order to perform the services set forth herein, an employee at a mandatory voter registration agency shall possess the following qualifications:

1. be an employee of the mandatory voter registration agency; and

2. have received in-service training on implementation of the NVRA.

B. Duties. Every qualified employee at each mandatory voter registration agency shall comply with and perform all requirements of 42 U.S.C. §1973gg-5 and R.S. 18:116, and shall comply with and perform all duties and responsibilities as set forth in training, manuals, pamphlets, rules and procedures of the secretary of state.

C. Prohibitions. A qualified employee who provides services described in Paragraph A of Section 405 of this Chapter shall not:

1. seek to influence an applicant’s political preference or party registration;

2. display any such political preference or party allegiance;

3. make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

4. make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:116, R.S. 36:742, 42 U.S.C. §1973gg et seq., and the Permanent Injunction issued in “Scott, et al. v. Schedler, et al.” (Docket No. 11-926), United States District Court, Eastern District of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:

§413. Review Process

A. Each mandatory voter registration agency shall appoint a qualified employee to serve as the NVRA site coordinator. Each department shall also appoint an NVRA department coordinator. The NVRA site coordinators and

NVRA department coordinator shall be responsible for ensuring compliance by each mandatory voter registration agency with the duties and responsibilities provided in 42 U.S.C. §1973gg-5 and R.S. 18:116, and as set forth in training, manuals, pamphlets, rules and procedures of the secretary of state.

B. Each department shall submit the names and contact information of the NVRA site coordinators and NVRA department coordinator to the secretary of state NVRA coordinator. When a change is made, the department shall provide the name and contact information to the secretary of state NVRA coordinator within 10 days.

C. On a quarterly basis, each NVRA department coordinator shall meet with the secretary of state NVRA coordinator to review procedures, forms, and registration data, and to monitor any problem areas where changes in rules or laws may be necessary, or where improvement is needed.

D. Beginning on January 1, 2014, and on a quarterly basis thereafter, the NVRA department coordinator shall submit to the secretary of state NVRA coordinator a concise report that documents the following:

1. the total number of applications for service or assistance, recertifications, renewals, and changes of address relating to such service or assistance received by the department, by program and site;

2. the total number of declaration forms received by the department, by program and site; and

3. the total number of completed voter registration applications received by the department and forwarded to the appropriate registrar of voters, by program and site.

E. Each department shall submit its policies, procedures, and forms currently in use or to be used to implement the provisions of 42 U.S.C. §1973gg-5 and R.S. 18:116 to the secretary of state for approval. The secretary of state shall submit approved policies, procedures, and forms submitted by each department to the United States Department of Justice for preclearance as required by section 5 of the Voting Rights Act. The department shall not implement any policies, procedures, or forms until the approval of the secretary of state and preclearance from the United States Department of Justice has been obtained and provided to the department. The requirement for preclearance shall be applicable as long as preclearance requirements remain in effect.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:116, R.S. 36:742, 42 U.S.C. §1973gg et seq., and the Permanent Injunction issued in “Scott, et al. v. Schedler, et al.” (Docket No. 11-926), United States District Court, Eastern District of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:

§415. Training

A. Training on implementation of 42 U.S.C. §1973gg-5 and R.S. 18:116 shall be provided as follows.

1. The secretary of state shall provide annual training to the NVRA department coordinator, NVRA site coordinators, and other personnel designated by the NVRA department coordinator.

2. The NVRA department coordinator shall provide training for new employees described in Paragraph C of

Section 403 of this Chapter during employee orientation or as part of initial training within 30 days of the date of hire.

3. The NVRA department coordinator shall provide training on no less than an annual basis to all employees described in Paragraph C of Section 403 of this Chapter.

B. All training shall include, but shall not be limited to the following:

1. review of responsibilities of employees to distribute voter registration applications and provide declaration forms;

2. discussion of information which may be used to establish an applicant’s age, identity, and residency;

3. discussion of assistance that may be provided to an applicant;

4. review of responsibilities in ensuring accuracy and legibility of voter registration applications and stressing responsibility for informing each applicant that the applicant is not registered to vote until the parish registrar of voters notifies the applicant of registration;

5. review of transmittal requirements; and

6. review of prohibitions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:116, R.S. 36:742, 42 U.S.C. §1973gg et seq., and the Permanent Injunction issued in “Scott, et al. v. Schedler, et al.” (Docket No. 11-926), United States District Court, Eastern District of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:

§419. List of Mandatory Voter Registration Agencies

A. The secretary of state shall maintain a list of the physical location of each mandatory voter registration agency. Once a year, the secretary of state shall submit the list to the NVRA department coordinator who shall verify the list within 30 days. If there is a change, the NVRA department coordinator shall notify the secretary of state NVRA coordinator within 10 days of the change.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:116, R.S. 36:742, 42 U.S.C. §1973gg et seq., and the Permanent Injunction issued in “Scott, et al. v. Schedler, et al.” (Docket No. 11-926), United States District Court, Eastern District of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:

§421. Monitoring and Compliance

A. Upon written request of the secretary of state, a department shall prepare a report on NVRA policies, procedures, and practices in sufficient detail to enable the secretary of state to assess compliance with the NVRA for any mandatory voter registration agency within that department.

B. If, based upon the department’s report and such other information as may come to his attention, the secretary of state suspects a violation, deficient practice or noncompliance with the NVRA, the secretary of state may:

1. request additional information from the department;
2. send a compliance letter to the department to correct any violation, deficient practice or noncompliance;

or

3. report the suspected violation, deficient practice or noncompliance to the United States Department of Justice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:116, R.S. 36:742, 42 U.S.C. §1973gg et seq., and the Permanent Injunction issued in “Scott, et al. v. Schedler, et al.” (Docket No. 11-926), United States District Court, Eastern District of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:

§423. Application of this Chapter

A. This Chapter shall apply equally to all independent contractors, officials, as well as all full-time and part-time classified and unclassified employees of all mandatory voter registration agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:116, R.S. 36:742, 42 U.S.C. §1973gg et seq., and the Permanent Injunction issued in “Scott, et al. v. Schedler, et al.” (Docket No. 11-926), United States District Court, Eastern District of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:

§425. Requirement for Preclearance

A. These emergency rules shall not be implemented until preclearance of the rules is received from the United States Department of Justice, as required by section 5 of the Voting Rights Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:116, R.S. 36:742, 42 U.S.C. §1973gg et seq., and the Permanent Injunction issued in “Scott, et al. v. Schedler, et al.” (Docket No. 11-926), United States District Court, Eastern District of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:

Tom Schedler
Secretary of State

1304#004

DECLARATION OF EMERGENCY

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

**Oyster Season Opening in a Portion of the Public Oyster
Seed Grounds East of the Mississippi River**

In accordance with the emergency provisions of Louisiana Revised Statutes (R.S.) 49:953, under the authority of R.S. 56:433, R.S. 56:435.1 and R.S. 56:435.1.1(D), and under the authority of a Declaration of Emergency passed by the Wildlife and Fisheries Commission on August 2, 2012, notice is hereby given that the secretary of the Department of Wildlife and Fisheries hereby declares that the 2012/2013 oyster season in a portion of the public oyster seed grounds east of the Mississippi River, further described below, shall open at one-half hour before sunrise on Monday, April 8, 2013 and shall be restricted to the harvesting of oysters three

inches in size and greater for market purposes only. The oyster season opening shall include that portion of the public oyster seed grounds east of the Mississippi River, south of the Mississippi River Gulf Outlet, and north of a line of latitude at 29 degrees 34 minutes 48.0 seconds north, except for the Bay Gardene Public Oyster Seed Reservation and recent cultch plants in the following areas, which shall remain closed:

Lake Fortuna (2012)—St. Bernard Parish

- A. 29 degrees 39 minutes 08.04 seconds N
89 degrees 30 minutes 28.93 seconds W
- B. 29 degrees 38 minutes 33.31 seconds N
89 degrees 29 minutes 15.45 seconds W
- C. 29 degrees 38 minutes 10.57 seconds N
89 degrees 29 minutes 40.71 seconds W
- D. 29 degrees 39 minutes 04.41 seconds N
89 degrees 30 minutes 32.61 seconds W

Black Bay (2013)—Plaquemines Parish

- A. 29 degrees 37 minutes 43.15 seconds N
89 degrees 34 minutes 09.14 seconds W
- B. 29 degrees 37 minutes 43.15 seconds N
89 degrees 32 minutes 51.49 seconds W
- C. 29 degrees 36 minutes 34.12 seconds N
89 degrees 32 minutes 51.49 seconds W
- D. 29 degrees 36 minutes 34.12 seconds N
89 degrees 34 minutes 09.72 seconds W

The normal oyster season opening in this area was previously delayed in order to protect recently-settled oyster spat so as to increase the likelihood of spat survival in areas where oyster resources are at historic lows and spatfall has been below normal in recent years. Recent biological sampling indicated that spat growth has occurred, although elevated spat mortality was also documented. Commercial harvest of market-size oysters in this area should have limited impacts on the survival of remaining oyster spat. The opening of the oyster season in this area will also provide positive economic opportunities for the Louisiana oyster industry.

Notice of any opening, delaying or closing of a season will be made by public notice at least 72 hours prior to such action, unless such closure is ordered by the Louisiana Department of Health and Hospitals for public health concerns.

Robert J. Barham
Secretary

1304#012

Rules

RULE

Department of Children and Family Services Division of Programs Licensing Section

Juvenile Detention Facilities Fees, Fines, Penalties, and State Central Registry Disclosure (LAC 67:V.Chapter 75)

The Department of Children and Family Services (DCFS), Division of Programs, Licensing Section in accordance with provisions of the Administrative Procedure Act, R.S. 49:953(A) has amended LAC 67:V, Subpart 8, Residential Licensing, Chapter 75, Juvenile Detention Facilities to comply with the provisions of Act 814 which was enacted during the 2012 Regular Legislative Session.

In accordance with Act 814 all juvenile detention facilities (JDF) licensed by DCFS shall be assessed with an annual licensing fee. Whoever operates any juvenile detention facility without a valid license issued by the department shall be fined \$1,000 for each day of operation without a valid license. State central registry disclosure shall be required for any owner, operator, current or prospective employee, or volunteer of a juvenile detention facility.

This Rule is effective July 1, 2013.

Title 67

SOCIAL SERVICES

Part V. Child Welfare

Subpart 8. Residential Licensing

Chapter 75. Juvenile Detention Facilities

§7503. Authority

- A. ...
- B. Penalties

1. Whoever operates a juvenile detention facility without a valid license issued by the department shall be fined \$1,000 per day for each day of such unlicensed operation in accordance with R.S. 15:1110.1. Such fines may be assessed by the department separately or in conjunction with a proceeding for injunctive relief as provided in Section 7503.B.2.

2. In addition to the civil fines, the department may file suit in the district court in the parish in which the facility is located for injunctive relief, including a temporary restraining order, to restrain the institution, society, agency, corporation, person or persons, or any other group operating the facility, from continuing the violation.

- C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1110.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:1559 (July 2012), amended LR 39:1006 (April 2013).

§7505. Definitions

* * *

Reasonable Suspicion—suspicion based on specific and articulable facts which indicate that an owner, operator, or

current or potential employee or volunteer has been investigated and determined to be the perpetrator of abuse or neglect against a minor resulting in a justified and/or valid finding currently recorded on the state central registry.

* * *

State Central Registry—repository that identifies any individual reported to have a justified (valid) finding of abuse and/or neglect of a child or children by DCFS.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1110.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:1559 (July 2012), amended LR 39:1006 (April 2013).

§7507. Licensing Requirements

- A. - B.1. ...

a. application and non-refundable fee as established by R.S. 15:1110(F);

- b. - o. ...

p. copy of grievance process;

q. a floor sketch or drawing of the premises to be licensed; and

r. documentation of completed state central registry disclosure forms noting no justified (valid) finding of abuse and/or neglect for all staff including owners, operators and administrators or documentation from the Risk Assessment Panel or Division of Administrative Law noting that the individual does not pose a risk to youth.

- B.2. - C.3 ...

- D. Fees

1. An annual fee as established by R.S. 15:1110(F), shall be payable to DCFS prior to the date of expiration of the current license by certified check, or money order. Non-payment of fee prior to the date of expiration of the current license shall result in the non renewal of the license. The licensee is responsible for ensuring receipt of the annual fee by the Licensing Section.

6 or fewer youth	7 to 15 youth	16 or More youth
\$400	\$500	\$600

- 2. Other license fees include:

a. a \$25 processing fee shall be submitted to the department for replacing a license when changes are requested by the provider, i.e., name change, age range, etc. No processing fee shall be incurred when the request coincides with the regular renewal of a license;

b. a \$5 processing fee shall be submitted to the department for issuing a duplicate license with no changes.

- E. - G.1.m. ...

n. permit an individual with a justified (valid) finding of child/abuse and/or neglect, who has disclosed that their name appears with a justified (valid) finding on the state central registry but who does not have a determination by the Risk Evaluation Panel or Division of Administrative Law that the individual does not pose a risk to youth, to be on the premises without being directly supervised by another

paid employee of the facility; or to knowingly permit an individual with such a justified (valid) finding of child abuse and/or neglect but who has not disclosed that their name appears on the state central registry, to be on the premises at any time, whether supervised or not supervised;

o. permit an individual, whether supervised or not supervised to be on the juvenile detention facility premises with a ruling by the Risk Evaluation Panel that the individual poses a risk to youth and the individual has not requested an appeal hearing by the Division of Administrative Law within the required time frame.

H. - I.7. ...

J. State Central Registry

1. All owners shall complete, sign, and date the state central registry disclosure form (SCR 1) as required by R.S. 15:1110.2. This information shall be reported on or before July 1, 2013 and/or prior to the individual being on the premises of the juvenile detention facility and shall be updated annually, at any time upon the request of DCFS, and within 24 hours or no later than the next business day, whichever is sooner, of any owner receiving notice of a justified (valid) finding of child abuse or neglect.

a. Within 24 hours or no later than the next business day, whichever is sooner, of current owners receiving notice of a justified (valid) finding of child abuse and/or neglect, an updated state central registry disclosure form (SCR 1) shall be completed by the owner as required by R.S. 15:1110.2 and submitted to the Licensing Section management staff. The owner will have 10 calendar days from completion of the state central registry disclosure form to request a risk assessment evaluation in accordance with LAC 67:I.305. If on-site at the facility and immediately upon the knowledge that a justified (valid) finding has been issued by DCFS, the owner shall be directly supervised by a paid staff (employee) of the facility. The employee responsible for supervising the owner must have on file a completed state central registry disclosure form indicating that the employee's name does not appear on the state central registry with a justified (valid) finding of abuse and/or neglect. An owner supervised by an employee who does not have a satisfactory disclosure form on file as provided in this Subsection shall be deemed to be alone and unsupervised. Under no circumstances may the owner with the justified finding be left alone and unsupervised with the youth pending the disposition of the Risk Evaluation Panel or the Division of Administrative Law. If not on site at the juvenile detention facility, owner shall submit a signed, dated statement that he or she will not be on the premises of the facility at any time.

i. If the Risk Evaluation Panel finds the owner poses a risk to youth and the individual does not appeal the finding within the required timeframe, the owner may close the facility or the license shall be revoked.

ii. If the Risk Evaluation Panel finds the owner poses a risk to youth and the individual appeals the finding to the Division of Administrative Law within the required timeframe, the owner shall continue to be under direct supervision at all times by a paid staff (employee) of the facility until a ruling is made by the Division of Administrative Law that they do not pose a risk to youth. Supervision must continue until receipt of a ruling from the Division of Administrative Law that the owner does not pose a risk to youth.

iii. If the Division of Administrative Law upholds the Risk Evaluation Panel finding that the individual does pose a risk to youth, the owner may close the facility or the license shall be revoked.

2. State central registry disclosure forms, documentation of any disposition of the Risk Evaluation Panel and, when applicable, the Division of Administrative Law ruling shall be available for review by DCFS personnel during the facility's hours of operation. This information shall be kept on file for a minimum of one year from termination of the employee or volunteer from the facility.

3. Any information received or knowledge acquired that a current or prospective owner, operator, volunteer, employee, prospective volunteer, or prospective employee has falsified a state central registry disclosure form stating that they are not currently recorded as a perpetrator with a justified (valid) finding of abuse or neglect shall be reported in writing to Licensing Section management staff as soon as possible, but no later than the close of business on the next business day.

4. Any state central registry disclosure form, Risk Evaluation Panel finding, and Division of Administrative Law ruling that is maintained in a juvenile detention facility licensing file shall be confidential and subject to the confidentiality provisions of R.S. 46:56(F) pertaining to the investigations of abuse and/or neglect.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1110.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:01561000 (July 2012), amended LR 39:1006 (April 2013).

§7509. Administration

A. - E.5.d. ...

F. Other Jurisdictional Approvals. The provider shall comply and show proof of compliance with all relevant standards, regulations, and requirements established by federal, state, local, and municipal regulatory bodies including annual approval by the following:

1. Office of Public Health, Sanitarian Services;
2. Office of the State Fire Marshal;
3. city fire department, if applicable; and
4. Department of Education, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1110.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:1564 (July 2012), amended LR 39:1007 (April 2013).

§7511. Facility Responsibilities

A. - A.3.d.i. ...

e. Providers that utilize volunteers shall have on each volunteer a completed state central registry disclosure form (SCR 1) noting whether or not his/her name is currently recorded on the state central registry for a justified finding of abuse and/or neglect and he/she is the named perpetrator as required in R.S. 15:1110.2;

i. this information shall be reported prior to the individual being on the premises of the juvenile detention facility and shall be updated annually, at any time upon the request of DCFS, and within 24 hours or no later than the next business day, whichever is sooner, of any volunteer

receiving notice of a justified (valid) finding of child abuse and/or neglect;

ii. the current or prospective volunteer shall complete, sign, and date the state central registry disclosure form and submit the disclosure form to the owner or operator of the facility;

(a). if the current or prospective volunteer discloses that his or her name is currently recorded as a perpetrator on the state central registry, the administrator shall inform the individual that he may not continue with volunteer duties or that they will not be considered for volunteer duties at that time due to the state central registry disclosure. The administrator will provide the prospective volunteer with the risk evaluation panel form (SCR 2) so that a risk assessment evaluation may be requested;

(b). individuals are eligible for volunteer services if and when they provide written documentation from the Risk Evaluation Panel or the Division of Administrative Law noting that they do not pose a risk to youth;

iii. current volunteers receiving notice of a justified (valid) finding of child abuse and/or neglect shall complete an updated state central registry disclosure form (SCR 1) noting the existence of the justified (valid) finding as required by R.S. 15:1110.2. This updated SCR 1 shall be submitted to the Licensing Section management staff upon being on the juvenile detention facility premises. Volunteers will have 10 calendar days from the date of required completion of the state central registry disclosure form to request a risk assessment evaluation in accordance with LAC 67:I.305 or shall be informed that he shall not continue with volunteer duties or be on the juvenile detention facility premises;

(a). if the volunteer will no longer provide volunteer services at the facility, the provider shall submit a signed, dated statement indicating that the volunteer will not be on the premises of the facility at any time;

(b). immediately upon the receipt of the knowledge that a justified (valid) finding has been issued by DCFS and as a condition of continued volunteer services, the volunteer shall be directly supervised by a paid staff (employee) of the facility who has not disclosed that their name appears with a justified (valid) finding on the state central registry. Provider shall submit a written statement to Licensing Section management staff acknowledging that the volunteer is under continuous direct supervision by a paid staff who has completed the required state central registry disclosure form and who has indicated on that form that the employee's name does not appear on the state central registry with a justified (valid) finding on the state central registry. Under no circumstances may the volunteer with the justified finding be left alone and unsupervised with the youth pending the disposition by the Risk Evaluation Panel or the Division of Administrative Law that the staff person does not pose a risk to youth. Any volunteer or employee supervised by an employee who does not have a satisfactory disclosure form on file as provided above shall be deemed to be alone and unsupervised;

(c). if the risk evaluation panel finds the individual does pose a risk to youth and the individual fails to file an appeal within the required timeframe the volunteer shall be informed that he shall not continue with volunteer duties or be on the juvenile detention facility premises;

(d). if the Risk Evaluation Panel finds the individual does pose a risk to youth and the individual appeals the finding to the Division of Administrative Law within the required timeframe, the volunteer shall continue to be under direct supervision at all times by a paid employee of the facility until a ruling is made by the Division of Administrative Law that they do not pose a risk to youth. Supervision must continue until receipt of a ruling from the Division of Administrative Law that they do not pose a risk to youth;

(e). if the Division of Administrative Law upholds the Risk Evaluation Panel finding that the individual poses a risk to youth, the individual may not continue with volunteer duties or be on the juvenile detention facility premises;

iv. any owner, operator, current or prospective employee, or volunteer of a juvenile detention facility requesting licensure by DCFS and/or a juvenile detention facility licensed by DCFS is prohibited from working in a juvenile detention facility if the individual discloses, or information is known or received by DCFS, that the individual's name is recorded on the state central registry (SCR) as a perpetrator for a justified (valid) finding of abuse or neglect of a child, unless there is a finding by the Risk Evaluation Panel or a ruling by the Division of Administrative Law that the individual does not pose a risk to youth.

B. Background Clearance

1. - 3. ...

4. Prior to employment, each prospective employee shall complete a state central registry disclosure form prepared by the department as required in R.S. 15:1110.2. This information shall be reported prior to the individual being on the premises of the juvenile detention facility and shall be updated annually, at any time upon the request of DCFS, and within 24 hours or no later than the next business day, whichever is sooner, of any staff receiving notice of a justified (valid) finding of child abuse or neglect.

a. The prospective paid staff (employee) shall complete, sign, and date the state central registry disclosure form and submit the disclosure form to the owner or operator of the facility.

i. If a prospective staff (employee) discloses that his or her name is currently recorded as a perpetrator on the state central registry, the administrator shall inform the applicant they will not be considered for employment at that time due to the state central registry disclosure. The administrator will provide the prospective employee with the risk evaluation panel form (SCR 2) so that a risk assessment evaluation may be requested.

ii. Individuals are not eligible for employment unless and until they provide written documentation from the risk evaluation panel or the Division of Administrative Law expressly stating that they do not pose a risk to youth.

b. Current staff receiving notice of a justified (valid) finding of child abuse and/or neglect shall complete an updated state central registry disclosure form (SCR 1) noting the existence of the justified (valid) finding as required by R.S. 15:1110.2. This updated SCR 1 shall be submitted to the Licensing Section management staff within 24 hours or no later than the next business day, whichever is sooner, or upon being on the juvenile detention facility

premises, whichever is sooner. Staff will have 10 calendar days from the date of required completion of the state central registry disclosure form to request a risk assessment evaluation in accordance with LAC 67:I.305 or shall be terminated immediately.

i. If the staff person will no longer be employed at the facility, the provider shall submit a signed, dated statement indicating that the staff will not be on the premises of the facility at any time.

ii. Immediately upon the receipt of the knowledge that a justified (valid) finding has been issued by DCFS and as a condition of continued employment the staff person shall be directly supervised by a paid staff (employee) of the facility who has completed the required state central registry disclosure form and who has indicated on that form that the employee's name does not appear on the state central registry with a justified (valid) finding on the state central registry. Provider shall submit a written statement to Licensing Section management staff acknowledging that the staff is under continuous direct supervision by a paid staff as provided above. When these conditions are met, the staff (employee) may be counted in staff to youth ratio. Under no circumstances may the staff person with the justified finding be left alone and unsupervised with the youth pending the disposition by the Risk Evaluation Panel or the Division of Administrative Law that the staff person does not pose a risk to youth.

iii. If the Risk Evaluation Panel finds the individual does pose a risk to youth and the individual fails to appeal the decision within the required timeframe, the staff (employee) shall be terminated immediately.

iv. If the Risk Evaluation Panel finds the individual poses a risk to youth and the individual appeals the finding to the Division of Administrative Law within the required timeframe, the staff (employee) shall continue to be under direct supervision at all times by another paid employee of the facility who has completed the required state central registry disclosure form and who has indicated on that form that the employee's name does not appear on the state central registry with a justified (valid) finding on the state central registry until a ruling is made by the Division of Administrative Law that they do not pose a risk to youth. Supervision must continue until receipt of a ruling from the Division of Administrative Law that they do not pose a risk to youth.

v. If the Division of Administrative Law upholds the Risk Evaluation Panel finding that the individual does pose a risk to youth, the individual shall be terminated immediately.

c. Any owner, operator, current or prospective employee, or volunteer of a juvenile detention facility requesting licensure by DCFS and/or a juvenile detention facility licensed by DCFS is prohibited from working in a juvenile detention facility if the individual discloses, or information is known or received by DCFS, that the individual's name is recorded on the state central registry (SCR) as a perpetrator for a justified (valid) finding of abuse and/or neglect of a child, unless there is a finding by the Risk Evaluation Panel or a ruling by the Division of Administrative Law that the individual does not pose a risk to youth.

C. - G7 ...

H. Record Keeping

1. Personnel Files

a. The provider shall maintain a current, accurate, confidential personnel file on each staff. This file shall contain, at a minimum, the following:

i. - v. ...

vi. annual performance evaluations;

vii. any other information, reports, and notes relating to the individual's employment with the facility; and

viii. annual state central registry disclosure form noting whether or not his/her name is currently recorded on the state central registry for a justified (valid) finding of abuse and/or neglect and he/she is the named perpetrator.

H.2. - L.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1110.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:1564 (July 2012), amended LR 39:1007 (April 2013).

Suzy Sonnier

Secretary

1304#098

RULE

Department of Economic Development Office of Business Development Office of Entertainment Industry Development

Entertainment Industry Tax Credit
Programs—Digital Media and Software Act
(LAC 61:I.1661-1673)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Economic Development hereby amends the rules for the Digital Media and Software Tax Credit Program to bring the rules into compliance with current statutory provisions and administrative practices.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 16. Louisiana Entertainment Industry Tax Credit Programs

Subchapter D. Louisiana Digital Media Act

§1661. Purpose

A. The purpose of this Chapter is to administer the Louisiana Digital Media and Software Act as established by R.S. 47:6022.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:632 (April 2009), amended LR 36:1981 (September 2010), LR 39:1009 (April 2013).

§1663. General Description

A. - C. ...

D. For expenditures incurred prior to January 1, 2012, credits are non-refundable, transferable credits with a 10 year carryover period. For expenditures incurred on or after

January 1, 2012, credits are refundable, contain no transferability or carryover provisions, and a company may elect, on a one time basis, to receive an 85 percent rebate instead of the refundable credit.

E. These rules shall be subject to oversight by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs, in accordance with the Administrative Procedure Act.

F. Applicants may apply for more than one tax credit program administered by the Department of Economic Development, provided that:

1. separate applications are submitted per program;
2. expenditures shall only qualify for one specified program; and
3. multiple applications shall not result in any duplication of tax credits.

G. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 35:632 (April 2009), amended LR 36:1981 (September 2010), LR 39:1009 (April 2013).

§1665. Definitions

A. - B. ...

* * *

Commercial Distribution—distribution of digital content from producer to consumer. Examples may include but not be limited to physical distribution of DVD's from a store front retailer or digital distribution of content, streamed or downloaded via the internet.

Commercial Release—the date when the product is first commercially available for sale to or use by the general public, typically after beta testing or similar quality control testing by a limited number of users.

Company—an entity authorized to do business in the state of Louisiana, engaged in the business of producing digital interactive media as defined in this section. Company shall not mean or include any company owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on a loan made by the state or a loan guaranteed by the state, nor with any company or person who has ever declared bankruptcy under which an obligation of the company or person to pay or repay public funds or monies was discharged as part of such bankruptcy.

Component Parts—all elements that are integral to the functioning or development of such products and platforms. Some examples may be, but are not limited to: software, computer code, image files, music files, audio files, scripts and plays, concept mock-ups, software tools, and testing procedures. Shall also include, but not be limited to: computer servers, workstations, server racks, hard drives, optical drives, monitors, keyboards, integrated video and audio equipment, networking routers, switches, network cabling, and any other computer-related hardware necessary to create or operate a digital interactive media product or platform. *Create* or *operate* refers to the creation or operation of the digital platform or product and does not refer to the creation or operation of the parent company.

* * *

Digital Content—intellectual property that is published or distributed via a digital media platform or product, including but not limited to software, computer code, image

files, music files, audio files, video files, text, data, and streaming video.

* * *

Digital Interactive Media—products or platforms that are:

a. intended for commercial production, use or distribution;

b. contain at least two of the following types of data: text, sound, fixed images, video, or 3D geometry; and

c. that have all of the following three characteristics:

i. digital—a system that uses discrete (discontinuous) values ordinarily symbolized numerically to represent information for input, processing, transmission and storage. A digital system would be contrasted with an analog system which uses a continuous range of values to represent information. The term digital includes, but is not limited to information input, processed, transmitted and stored via the internet;

ii. interactive—a digital media system for inputting, processing, transmitting or storing information or data in which users of the system are able to respond to the digital media system by inputting, transmitting, processing or storing information or data in response to the information or data provided to them through the digital media system. (Digital media system means communication delivered via electronic energy where the information stored, transmitted, or received is in digital form;

iii. media—communication tools used to store, transmit, distribute and deliver information and data. It includes methods and mechanisms for information distribution through, but not limited to distributed networks, such as the Internet, and through compact disc, CD-ROM, various types of DVD, and other removable storage drives and devices;

d. digital interactive media may include, but not be limited to:

- i. video or interactive games;
- ii. simulation software;
- iii. interactive educational or training products;
- iv. internet sites designed and developed as social media;

v. software applications that provide connectivity; and communications between mobile devices and digital interactive media web platforms; and

vi. technology designed to stream live or pre-recorded video content over the internet to large simultaneous audiences;

e. digital interactive media shall not include:

i. software development primarily designed and developed for institutional, private or internal purposes;

ii. largely static internet sites designed to provide information about a person, business, or firm;

iii. Repealed.

iv. products regulated under the Louisiana Gaming Control Law or the Indian Gaming Regulatory Act; or

v. largely static retail websites. When determining eligibility, LED will consider amount of proposed programming work versus use of pre-built templates and any other factors it deems most appropriate under the circumstances.

Digital Interactive Media Company—Repealed.

Digital Media Products or Platforms—the basic infrastructure that allows various media file types to coexist in an integrated, customized content loop:

a. *product*—any audiovisual work embodied in software or other digital electronic form that are only capable of being used with a platform. Examples may include, but not be limited to software games.

b. *platform*—a software architecture that serves as a foundation or base upon which other products, processes or technologies are developed. Software platforms should provide base functionality and communicate back and forth with other software products.

* * *

Expenditure—actual payment of cash or cash equivalent for goods or services, as evidenced by an invoice, receipt or other such document. Cash or cash equivalent transactions may include but not be limited to: commercial or bank financed loans, actual physical transfer of coins and banknotes, other forms of transmission that will turn into cash very quickly, including written checks, credit cards, bank debit cards, and bank wire transfers. However, the receipt of a promissory note, the creation of an account receivable, or the sending of a customer invoice are not, by themselves, evidence of an *expenditure*. Owner-financed transactions will only qualify as an *expenditure* when actual cash or cash equivalent payments are made.

* * *

Payroll—includes all salary, wages and other compensation sourced or apportioned to Louisiana, and federal payroll taxes such as the employer's portion of FICA/FUTA and workers' compensation insurance costs to the extent purchased from a source within the state. Fringe Benefits including health care costs, 401K contributions, dental plans, and life insurance will be considered if these costs are paid by the employer and costs are apportioned to services performed in Louisiana on a certified project.

* * *

Production Expenses—preproduction and production expenditures in the state directly relating to and proportionate with work performed in Louisiana on a state-certified production. In qualifying submitted expenditures as production-related costs, LED may determine whether such expenditures represent legitimate expenditures for the actual cost of related goods or services, having economic substance and a business purpose related to the certified production, and not constructive dividends, self-dealing, inflated prices or similar transactions entered into for the purpose of inflating the amount of tax credits earned rather than for the benefit of the production. See §1668 for detailed illustrative examples of eligible and ineligible expenditures commonly associated with digital interactive media projects.

* * *

Tax Credit—digital interactive media and software development *tax credit*.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:633 (April 2009), amended LR 36:1981 (September 2010), LR 39:1010 (April 2013).

§1667. Certification Procedures

A. - A.1.d. ...

B. Qualification

1. The office shall determine whether a production or project qualifies, by meeting all requirements of R.S. 47:6022 and these regulations, and taking the following factors into consideration.

a. The contribution of the production or project to the goal of creating an independent, self-supporting digital interactive media industry.

b. The impact of the production or project on the employment of Louisiana residents.

c. The impact of the production or project on the overall economy of the state.

2. Duration of Tax Credits

a. Tax credits may be granted under R.S. 47:6022 until such statute is amended, modified or repealed.

3. Amount of Tax Credits. Tax credits are earned per calendar year at the time funds are expended in Louisiana on a state certified production.

a. For applications for state-certified productions submitted to the office prior to July 1, 2009 and subsequently approved by the office and the secretary, a tax credit shall be earned by producers as follows.

i. The producer shall earn tax credits at the rate of 20 percent of the base investment for the first and second years following certification of the project as a state certified production.

ii. The producer shall earn tax credits at the rate of 15 percent of the base investment for the third and fourth years following certification of the project as a state certified production.

iii. The producer shall earn tax credits at the rate of 10 percent of the base investment for the fifth and sixth years following certification of the project as a state certified production.

iv. No tax credits may be earned after the sixth year following certification of the project as a state certified production.

b. For applications for state-certified productions submitted to the office on or after July 1, 2009 but before July 11, 2011, and subsequently approved by the office and the secretary, a tax credit shall be earned by a digital interactive media company as follows.

i. Expenditures made on or after July 1, 2009 shall earn tax credits at the rate of 25 percent of the base investment:

(a) to the extent that base investment is expended on payroll for Louisiana residents employed in connection with a state-certified production, a digital interactive media company shall earn additional tax credits at the rate of 10 percent of payroll;

(b) the initial certification shall be effective for expenditures made prior to the date of initial certification and shall be valid until the production is completed.

(i). The production shall be considered complete when it receives its first commercial release, or other appropriate benchmark as agreed to between the parties and outlined in the initial certification.

ii. Expenditures made prior to July 1, 2009 may qualify for tax credits as follows.

(a). The initial certification shall indicate a beginning date for qualifying expenditures to earn tax credits (hereafter known as “start date”) which shall be no earlier than June 30, 2005, the effective date of the original LA Digital Media Act, R.S. 47:6022.

(b). Tax credits shall be earned when expenditures are made, at the following rates.

(i). For each of the first and second years following the start date, the producer shall earn tax credits at the rate of 20 percent of the base investment.

(ii). For each of the third and fourth years following the start date, the producer shall earn tax credits at the rate of 15 percent of the base investment.

(iii). For each of the fifth and sixth years following the start date, the producer shall earn tax credits at the rate of 10 percent of the base investment.

(c). As an illustrative example, if a company applies on August 1, 2009, but indicates that it may have qualifying expenditures dating back to August 1, 2007, the producer would earn tax credits at the following rates.

(i). Expenditures made from August 1, 2007-June 30, 2009 would earn tax credits at the rate of 20 percent for the first and second years after the start date.

(ii). Expenditures made July 1, 2009 onwards would earn at the flat rate of 25 percent, with the possibility of an additional 10 percent for payroll expenditures.

(d). The initial certification letter shall specifically state the applicable tax credit rates for each state certified production.

c. For applications for state-certified productions submitted to the office on or after July 11, 2011, and subsequently approved by the office and the secretary, tax credits shall be earned by an approved digital media company as follows.

i. Expenditures made after July 1, 2009 shall earn tax credits at the rate of 25 percent of the base investment:

(a). to the extent that base investment is expended on payroll for Louisiana residents employed in connection with a state-certified production, a company shall earn additional tax credits at the rate of 10 percent of payroll;

(b). the initial certification shall be effective for expenditures made no more than six months prior to the date of initial certification and shall be valid until the project is completed;

(c). the production shall be considered complete when it receives its first commercial release, or other appropriate benchmark as agreed to between the parties and outlined in the initial certification.

C. - C.5. ...

D. Final Certification and Accounting Requirements

1. Prior to final certification of tax credits of a state-certified production or any portion thereof, the producer or digital interactive media company shall submit to the office:

a. a cost report of production expenditures:

i. the cost report of expenditures shall be subject to an agreed-upon procedures engagement conducted by a certified public accountant in accordance with statements on standards for attestation engagements established by the American Institute of Certified Public Accountants;

ii. the accountant shall issue a report in the form of procedures and findings. The accountant shall be a certified public accountant licensed in the state of Louisiana and shall be an independent third party unrelated to the digital interactive media company;

iii. the agreed upon procedures have been established by the office and the secretary, with assistance from the Society of Louisiana Certified Public Accountants, as promulgated in accordance with the Administrative Procedure Act;

b. any additional information as requested by the office and/or the secretary, reasonably necessary to determine eligibility for tax credits, including but not limited to a request for an additional audit at the applicants expense;

i. incorrect reporting—if an applicant submits a cost report required by the provisions of this Chapter and the report made and filed contains material misstatements, including but not limited to misrepresentation in or intentional omission from the cost report of events, transactions, or other significant information there may be cause for an additional audit;

ii. related party transactions—if an audit contains related party transactions in excess of 20 percent of the total expenditures reported in the submitted audit there may be cause for an additional audit;

iii. reimbursement of audit costs—the department may undertake additional audit at the applicant’s expense, to be performed by a state certified public accountant also certified in financial forensics or also certified as a fraud examiner. Audit fees will be assessed at the department’s contracted fee, with a minimum of \$2,000 and a maximum of \$15,000 fee per audit.

2. Upon completion of all or a portion of a state-certified production, the office shall review the production expenses and upon a determination of qualification the office and the secretary will issue a final tax credit certification letter including:

i. the amount of tax credits;

ii. the unique identifying number for the state certified production.

3. - 3.c. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:633 (April 2009), amended LR 36:1983 (September 2010), LR 39:1011 (April 2013).

§1668. Illustrative Examples of Production Expenses

A. Eligible—

1. salary expenses directly relating to the development of a state certified production, with position titles including but not limited to programmer, game designer, industrial designer, and quality assurance/tester. When determining eligibility, LED will consider job title, job description, staff resumes and any other factors it deems most appropriate under the circumstances;

2. preproduction stage expenses such as design documents, mock-ups and prototypes;

3. testing software, source code development, patches, updates, sprites, three-dimensional models and level design;

a. testing software—activities entirely devoted to quality assurance of a product;

b. three-dimensional models—electronic media representations, three dimensional representations of geometric data for the purpose of rendering 2D images and performing calculations;

c. updates—activities directly relating to recalibrating or revising a product;

4. costs associated with photography and sound synchronization, lighting and related services;

a. lighting and related services—includes but not limited to, the use of motion capture technology or green screen technology;

5. rental of Louisiana facilities and equipment, that are directly related to production. If production facility hosts both qualifying and non-qualifying work areas, rent should be pro rated accordingly;

6. purchase of prepackaged audio files, video files, photographic, or libraries;

7. purchase of license to use pre-recorded audio files, video or photographic files;

8. development costs associated with producing audio files and video files to be used in the production of the end product under development;

9. purchase of game engines or content management platforms produced for general sale.

B. Ineligible—

1. salary expenses not directly related to the development of a state certified production, including but not limited to staff in the following departments: customer service, IT, clerical, sales and marketing, human resources, accounting, janitorial service. When determining eligibility, LED will consider job title, job description, staff resumes and any other factors it deems most appropriate under the circumstances;

2. salary expenses for C-level positions are not an eligible expenditure, unless applicant can demonstrate that services performed in Louisiana were directly related to the development of a state certified production. When determining eligibility, LED will consider size and nature of company, resumes and any other factors it deems most appropriate under the circumstances;

3. expenditures made prior to preproduction, such as research and development, workforce recruitment or intellectual property research;

4. expenditures for or related to marketing, promotion and distribution;

5. administrative, payroll, and management services which are not directly related to management of the state-certified production;

6. amounts that are later reimbursed by the state or any other governmental agency;

7. costs related to the transfer of tax credits;

8. amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of the production;

9. application fee;

10. state or local taxes;

11. food, entertainment and lodging expenses;

12. cost of customization or custom development of a product is not an eligible production expense, unless the customization services are performed in Louisiana.

13. automobile expenditures such as mileage, purchase or maintenance costs;

14. parking fees;

15. furniture and fixture expenses;

16. digital content generated by the end user;

17. digital content comprised primarily of local news, events, weather, local market reports or public service content;

18. digital content expenses occurring after the state-certified production's commercial release;

19. audio/video content streamed through the internet or mobile platform is not an eligible production expense, unless it includes value added interactive functionality, as verified and approved by the director;

20. expenditures relating to the creation of standalone digital content simply transmitted through digital distribution methods, such as the original filming costs of a web based television series streamed through the internet;

21. maintenance services of existing software applications or products, generally performed by I.T. employees after commercial release, such as installation of security patches or modifications to debug or fix minor programming errors;

22. configuration services of existing software applications or products, generally performed by I.T. employees after commercial release, such as choosing from a number of defined options or modifying default capabilities to allow users different levels of access;

23. Data migration services, generally performed by I.T. employees after commercial release, such as the transfer of data from one back up tape to another, or costs with upgrading to a new version of a database system.

C. Limitations for Certain Transactions

1. Gamemaster positions are considered hybrid positions, involving both programmer and customer service functions. LED establishes a customary ratio of 50 percent programmer duties to 50 percent customer service. Salary expenses may therefore qualify on an allocated basis, proportionate with proven programmer duties. When determining eligibility, LED will consider size and nature of company, resumes and any other factors it deems most appropriate under the circumstances.

2. Hard costs for component parts, licenses and equipment may not exceed labor costs. LED establishes a customary expense ratio of 20 percent equipment versus 80 percent labor costs. When determining eligibility, LED will consider number of jobs to be created, proposed cost of component parts, licenses and equipment, company history and any other factors it deems most appropriate under the circumstances.

3. Project management fees may be limited to 20 percent of base investment.

4. Where goods are provided by a related party, qualifying expenditures are limited to fair market value, which may be established through the related party's historic dealings with unrelated parties, or actual transactions between other unrelated parties, for substantially similar goods. The comparable transactions must be substantially similar, considering the type of goods, the geographic market, and other pertinent variables.

For Example: The production company has recently acquired the same type of goods in Louisiana at the same price from an unrelated third party. If FMV cannot be established, qualifying expenditures will be limited to the internal cost recovery rate, consisting of actual documented acquisition cost, plus ongoing

maintenance and upgrade cost, divided by anticipated utilization over the real useful life.

5. Where services are provided by a related party, qualifying expenditures are limited to the actual compensation paid by the related party to its employee actually performing the service (including employer-paid benefits), allocated to the production on an hourly basis. Related party transactions must be supported by an audit and documentation as requested by LED, which may include (but is not limited to) third-party contracts, notarized affidavits, tax records, and cancelled checks.

6. Sub-contractor development labor is limited to the actual compensation paid by the sub-contractor to its employee actually performing the service (including employer-paid benefits), allocated to the production on an hourly basis. Applicants must provide detailed accounting and verification of sub-contractor expenditures, including submission of agreements reflecting the scope of services provided in Louisiana and upon request allow the state to audit the sub-contractor's accounting records directly relating to any expenses claimed for tax credits.

7. Any expenses made on behalf of a state certified production, by an entity other than the applicant approved by LED and being claimed for tax credits (such as payments made by a sub-contractor) must be submitted with additional supporting documentation as requested by LED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 39:1012 (April 2013).

§1669. Use of Tax Credits

A. For tax credits earned by expenditures made on or before December 31, 2011:

1. prior to claiming a tax credit on any tax return, or transferring any tax credit, a person must apply for and obtain final certification;

2. after receiving final certification, a tax credit may be applied as follows:

a. the credit shall be allowed against the income tax due for applications submitted prior to July 1, 2009, and against the income or franchise tax due for applications submitted on or after July 1, 2009. The credit shall be allowed against the income or franchise tax due from a taxpayer for the taxable period in which the credit is earned as well as the immediately preceding period. If the tax credit allowed exceeds the amount of such taxes due from a taxpayer, then any unused credit may be carried forward by the taxpayer as a credit against subsequent tax liability for a period not to exceed ten years. However, in no event shall the amount of the tax credit applied in a taxable period exceed the amount of such taxes due from the taxpayer for that taxable year;

b. all entities taxed as corporations for Louisiana income tax purposes shall claim any credit allowed under this section on their corporation income tax return, or in the case of applications submitted after July 1, 2009, their income and franchise tax returns;

c. individuals shall claim any credit allowed under this section on their individual income tax return;

d. entities not taxed as corporations shall claim any credits allowed under this Section on the returns of the partners or members as follows:

i. corporate partners or members shall claim their share of the credit on their corporation income tax returns;

ii. individual partners or members shall claim their share of the credit on their individual income tax returns;

iii. partners or members that are estates or trusts shall claim their share of the credit on their fiduciary income tax returns;

3. after receiving final certification, a tax credit may be transferred as follows:

a. any tax credits allocated to a person and not previously claimed by any taxpayer against his Louisiana state income or franchise tax may be transferred or sold by such person to another person, subject to the following conditions:

i. a single transfer may involve one or more transferees;

ii. transferors and transferred shall submit to the office and the Department of Revenue in writing, a notification of any transfer or sale of tax credits within thirty days after the transfer or sale of such tax credits. The notification shall include the transferor's tax credit balance prior to transfer, the state-certified production number, the name of the state-certified production, the transferor's remaining tax credit balance after transfer, all tax identification numbers for both transferor and transferee, the date of the transfer, the amount transferred, a copy of the tax credit certificate, and any other information required by the office or the Department of Revenue;

iii. failure to comply with this paragraph will result in disallowance of the tax credit until the taxpayers are in full compliance;

iv. the transfer or sale of this credit does not extend the time in which the credit can be used. The carry forward period for credit that is transferred or sold begins on the date on which the credit was originally earned;

v. the transferee shall apply such credits in the same manner and against the same taxes as the taxpayer originally awarded the credit.

B. For tax credits earned for expenditures made on or after January 1, 2012:

1. prior to claiming a tax credit on any tax return, a person must apply for and obtain final certification;

2. after receiving final certification, a company may elect to use a tax credit as follows:

a. refund—the tax credits shall be refundable and allowed against the individual or corporate income tax liability of the companies or financiers of the project in accordance with their share of the credit as provided for in the application for certification for the project. The credit shall be allowed for the taxable period in which expenditures eligible for a credit are expended as set forth in the final tax credit certification letter. Any excess of the credit over the income tax liability against which the credit may be applied shall constitute an overpayment, as defined in R.S. 47:1621(A), and the secretary of the Department of Revenue shall make a refund of such overpayment from the current collections of the taxes imposed by Chapter 1 of Subtitle II of Title 47, as amended. The right to a refund of any such overpayment shall not be subject to the requirements of R.S. 47:1621(B); or

b. rebate—at the time of final certification of tax credits, a company may elect, on a one-time basis, to receive a rebate of the credits. The amount of the rebate shall be 85 percent of the face value of the credits. Upon receipt of the final tax credit certification letter and any necessary additional information, the secretary of the Department of Revenue shall make payment to the company, or its irrevocable designee, which may include but not be limited to a bank or other lender, in the amount to which he is entitled from the current collections of the taxes collected pursuant to Chapter 1 of Subtitle II of Title 47, as amended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:634 (April 2009), amended LR 36:1984 (September 2010), LR 39:1014 (April 2013).

§1673. Agreed upon Accounting Procedures

A. The agreed upon accounting procedures shall be available to the public as follows:

1. posted on LouisianaEntertainment.gov;
2. available for viewing during regular business hours in the office;
3. sent to the applicant and incorporated into the initial certification letter; and
4. available upon written request to the director.

B. - B.8.d. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 36:1985 (September 2010), LR 39:1015 (April 2013).

Jason El Koubi
Assistant Secretary

1304#041

RULE

**Department of Economic Development
Office of Business Development
Office of Entertainment Industry Development**

**Musical and Theatrical Production Income Tax Credit
Program (LAC 61:I.1690-1697)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Economic Development hereby amends the rules for the Musical and Theatrical Production Income Tax Credit Program to bring the rules into compliance with current statutory provisions and administrative practices.

Title 61

REVENUE AND TAXATION

**Part I. Taxes Collected and Administered by the
Secretary of Revenue**

**Chapter 16. Louisiana Entertainment Industry Tax
Credit Programs**

**Subchapter E. Musical and Theatrical Production
Income Tax Credit Program**

§1692. Definitions

A. - B. ...

Base Investment—actual investment made and expended in this state by a state-certified musical or theatrical production:

- a. as production-related costs directly related to in state production; or
- b. as capital costs of a state-certified musical or theatrical facility infrastructure project.

Expenditure—actual payment of cash or cash equivalent, paid by or on behalf of a state certified production or state certified infrastructure project, exchanged for goods or services, as evidenced by an invoice, receipt or other such document. Cash or cash equivalent transactions may include but not be limited to: commercial or bank financed loans, actual physical transfer of coins and banknotes, other forms of transmission that will turn into cash very quickly, including written checks, credit cards, bank debit cards, and bank wire transfers. However, the receipt of a promissory note, the creation of an account receivable, or the sending of a customer invoice are not, by themselves, evidence of an *expenditure*. Owner-financed transactions will only qualify as an *expenditure* when actual cash or cash equivalent payments are made.

Infrastructure Expenditures—expenditures directly related to the state certified infrastructure project, shall include but not be limited to: land and acquisition costs, constructions costs, design fees, furniture, fixtures, equipment purchased subject to a sale agreement or capital lease. Infrastructure expenditures shall not include indirect costs such as general administrative costs, insurance, or any costs related to the transfer or allocation of tax credits. In qualifying submitted expenditures as production-related costs or capital costs related to an infrastructure facility, LED may determine whether such expenditures represent legitimate expenditures for the actual cost of related goods or services, having economic substance and a business purpose related to the certified production or facility, and not constructive dividends, self-dealing, inflated prices or similar transactions entered into for the purpose of inflating the amount of tax credits earned rather than for the benefit of the production or facility.

Multi-Purpose Facility—a building or building complex that is capable of more than one use. Examples may include, but not be limited to; a building complex containing a theatre and a restaurant; one building that can be configured in a variety of ways, such as the ability to host either a live performance stage production or a live sporting event.

Originate—shall include, but not be limited to, state-certified musical or theatrical productions which are:

- a. pre-Broadway engagement or remounts;
- b. tour or resident production remounts;
- b. resident or regional productions;
- c. national touring companies producing their first public performance in Louisiana; or
- d. concert tours producing their first public performance in Louisiana.

Payroll—all salary, wages, and other compensation, fringe benefits taxed, sourced or apportioned to Louisiana, and federal payroll taxes such as the employer’s portion of

FICA/FUTA and workers' compensation insurance costs to the extent purchased from a source within the state. Fringe Benefits including health care costs, 401K contributions, dental plans, and life insurance will be considered if these costs are paid by the employer and costs are apportioned to services performed in Louisiana on a certified project.

Production Expenditures—a contemporaneous exchange of cash or cash equivalent for goods or services related to development, production, or operating expenditures in this state for a state-certified production performed in Louisiana. (See §1694 for detailed illustrative examples of eligible and ineligible expenditures commonly associated with musical or theatrical production projects.)

* * *

Series of Productions—a new musical or theatrical production with multiple Louisiana performances in a 12 month period. Simply rebranding or renaming a series, without substantive creative changes, will make a series ineligible for recertification in subsequent years.

* * *

State-Certified Musical or Theatrical Production—a concert, musical or theatrical production, or a series of productions occurring over the course of a 12-month period, and the recording or filming of such production, which originate, are developed, or have their initial public performance before a paying audience within Louisiana, or which have their United States debut within Louisiana, and the production expenditures, expenditures for the payroll of residents, transportation expenditures, and expenditures for employing college and vocational-technical students related to such production or productions, that are certified, verified, and approved as provided for in this Section. Non-qualifying projects include, but are not limited to non-touring music and cultural festivals, industry seminars, trade shows, and any production activity taking place outside the state of Louisiana.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6034(E).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:2173 (October 2009), repromulgated LR 36:2237 (October 2010), amended LR 39:1015 (April 2013).

§1693. Certification Procedures

A. - C.3.c.i. ...

D. Final Certification and Audit Requirements

1. After review and upon a determination of qualification and initial certification, an applicant may obtain final certification as follows.

a. A cost report shall be submitted by the applicant, certified by an independent certified public accountant and complying with the minimum standards as required by R.S. 47:6034.

b. The cost report may be subject to additional audit at the applicant's expense. The department shall select the auditor and determine the audit standards.

i. **Incorrect Reporting.** If an applicant submits a cost report required by the provisions of this Chapter and the report made and filed contains material misstatements, including but not limited to misrepresentation in or intentional omission from the cost report of events,

transactions, or other significant information there may be cause for an additional audit.

ii. **Related Party Transactions.** If an audit contains related party transactions in excess of 20 percent of the total expenditures reported in the submitted audit there may be cause for an additional audit.

iii. **Reimbursement of Audit Costs.** The department may undertake additional audit at the applicant's expense, to be performed by a state certified public accountant also certified in financial forensics or also certified as a fraud examiner. Audit fees will be assessed at the department's contracted fee, with a minimum of \$2,000 and a maximum of \$15,000 fee per audit.

c. Additional information may be requested in order to make a determination of eligibility.

d. The department shall review the cost report and supporting information, and following verification of qualifying expenditures, shall issue a final tax credit certification letter.

e. Multiple requests for final certification may be submitted.

i. Each submission must be accompanied by an audited cost report indicating expenditures.

ii. Two submissions shall be certified at no additional fee by the department.

iii. Additional charges may apply for three or more certification requests.

E. - E.1.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6034(E).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:2175 (October 2009), repromulgated LR 36:2238 (October 2010), amended LR 39:1016 (April 2013).

§1694. Illustrative Examples of Production Expenses

A. Eligible

1. salary expenses directly relating to the development of a state certified production, with position titles including but not limited to: stagehands, crew, electricians. When determining eligibility, LED will consider job title, job description, staff resumes and any other factors it deems most appropriate under the circumstances;

2. artist compensation directly relating to performance days in Louisiana;

3. set construction and operation expenses;

4. special and visual effects expenses;

5. costumes, wardrobes and make-up accessories expenses;

6. costs associated with sound, lighting and staging.

B. Ineligible—

1.a. salary expenses not directly related to the development of a state certified production, including but not limited to staff in the following departments:

i. IT;

ii. clerical;

iii. human resources;

iv. janitorial service;

b. when determining eligibility, LED will consider job title, job description, staff resumes and any other factors it deems most appropriate under the circumstances;

2. state and local taxes;

3. any expenditures related to out of state production;
4. any costs later reimbursed by a third party;
5. any costs related to the transfer of tax credits.

C. Limitations for Certain Transactions—

1. artist compensation for non-performance days, such as rehearsals, shall be limited to no more than 20 percent of total base investment for performances in Louisiana;

2. where goods are provided by a related party, qualifying expenditures are limited to fair market value, which may be established through the related party's historic dealings with unrelated parties, or actual transactions between other unrelated parties, for substantially similar goods. The comparable transactions must be substantially similar, considering the type of goods, the geographic market, and other pertinent variables;

For Example: The production company has recently acquired the same type of goods in Louisiana at the same price from an unrelated third party. If FMV cannot be established, qualifying expenditures will be limited to the internal cost recovery rate, consisting of actual documented acquisition cost, plus ongoing maintenance and upgrade cost, divided by anticipated utilization over the real useful life.

3. where services are provided by a related party, qualifying expenditures are limited to the actual compensation paid by the related party to its employee actually performing the service (including employer-paid benefits), allocated to the production on an hourly basis. Related party transactions must be supported by an audit and documentation as requested by LED, which may include (but is not limited to) third-party contracts, notarized affidavits, tax records, and cancelled checks;

4. any expenses made on behalf of a state certified production, by an entity other than the applicant approved by LED and being claimed for tax credits, must be submitted with additional supporting documentation as requested by LED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6034(E).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 39:1016 (April 2013).

§1695. Additional Program Procedures—Production

A. - A.3.b.iii. ...

c. For Limited State-Certified Musical or Theatrical Productions

i. For applications received on or before January 1, 2013, a tax credit may be granted for base investments made by non-profit community theaters for each of the 2009 and 2010 calendar years.

ii. If the total base investment is more than \$25,000 but less than \$300,000, a tax credit of 10 percent of the base investment applies.

iii. Applicants shall be limited to a maximum of two applications per year, for the 2009 and 2010 calendar years.

iv. The total amount of tax credits eligible to be issued shall not exceed \$250,000 for each of the calendar years 2009 and 2010.

A.4. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6034(E).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:2175 (October 2009), repromulgated LR 36:2239 (October 2010), amended LR 39:1017 (April 2013).

§1697. Certification Procedures—Infrastructure

A. Qualification of the Infrastructure Project

1. - 2 ...

3. The department shall determine whether a facility "supports" or is a "necessary component" of a state certified infrastructure project. Examples of qualifying facilities would be a parking garage, gift shop or costume storage. Examples of non-qualifying facilities would be restaurants, bars, hotels, golf courses and shopping centers.

4. The department shall determine whether a facility is a "multi-purpose" infrastructure project, taking into consideration relevant factors such as the frequency of musical or theatrical productions; the configurations and permanence of stage and seating; the percentage of square footage allocated to live performance versus total building square footage; the booking agent or management company's professional experience; applicant's ability to document ticket sales through an on-line event ticketing site or on-site box office and any other factors deemed relevant by LED.

a. Upon a determination of qualification as a multi-purpose infrastructure project, the applicant may be subject to the following additional restrictions, which shall be set forth in the initial certification.

i. Only expenditures directly related to a live musical or theatrical performance in Louisiana are eligible for tax credits and any expenditures unrelated to such productions shall be excluded. In calculating the estimated amount of qualifying versus non-qualifying expenditures, LED will select the methodology it deems most appropriate under the circumstances.

ii. Tax credits may be subject to a structured release over the course of two to five years.

iii. State certification of a multi-purpose facility project is conditioned upon continued primary use for live performance productions for a period of at least two calendar years from date of project completion.

(a). Evidence of Compliance. Applicant shall provide annual reports to LED for two calendar years, verifying continued use primarily as a live performance production facility, which may include but not be limited to financial statements reflecting total ticket sales, food and beverage revenue, alcohol sales, and a detailed report of live performance productions held.

(b). Default. In the event applicant fails to comply with the continued use requirements during any of the specified years, applicant shall forfeit all unreleased tax credits (for the year in which it failed to comply and all future years).

iv. For the purposes of this section, entertainment typically performed in bars subject to a "cover charge" and non-traditional entertainment such as balloon artists, quiz shows and casting calls will not be considered a qualifying live performance production.

B. Duration of Tax Credit

1. Tax credits may be granted under R.S. 47:6034 until January 1, 2014.

C. Amount of and Limitations upon Tax Credit

1. If the total base investment is more than \$100,000, but less than \$300,000, a tax credit of 10 percent applies.

2. If the total base investment is more than \$300,000, but less than \$1,000,000, a tax credit of 20 percent applies.

3. If the total base investment is more than \$1,000,000, a tax credit of 25 percent applies.

4. No more than \$10,000,000 may be granted per state certified infrastructure project.

5. No more than \$60,000,000 may be granted, per year, for all state certified infrastructure projects.

a. Tax credits shall be available on a first come, first served basis, based upon date of final certification and qualification of expenditures. If the total amount of credits applied for in any particular year exceeds the aggregate amount of tax credits allowed for that year, the excess shall be treated as having been applied for on the first day of the subsequent year.

b. Fifty percent of the tax credits annually granted for infrastructure projects shall be reserved for projects located outside of Jefferson and Orleans parishes, provided that the availability of tax credits for infrastructure projects in Jefferson and Orleans parishes shall not be conditioned upon the granting of infrastructure tax credits for projects outside of those parishes.

D. - D.4. ...

E. Infrastructure Program Sunset Limitations

1. The final day that LED may grant tax credits under the infrastructure program is January 1, 2014.

2. In order to allow LED sufficient time prior to that date to verify project completion requirements and validate qualifying expenditures, LED recommends that state-certified infrastructure project applicants submit any requests for final certification of tax credits, with required cost report, to LED no later than August 1, 2013. LED shall make best efforts to timely process any requests received after this date.

3. In the event that either the program caps or geographic caps listed above are met for the calendar year 2013, LED shall publish notice on its website www.LouisianaEntertainment.gov and send out written notice to infrastructure applicants, advising them of cap fulfillment. Whereas excess expenditures are treated as having been applied on the first day of the subsequent year, and tax credits may not be awarded for 2014 expenditures, any 2013 excess expenditures will be considered non-qualifying.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6034(E).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:2177 (October 2009), repromulgated LR 36:2240 (October 2010), amended LR 39:1017 (April 2013).

Jason El Koubi
Assistant Secretary

1304#040

RULE

Board of Elementary and Secondary Education

Bulletin 118—Statewide Assessment Standards and Practices (LAC 28:CXI.305, 701, and 1817)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 118—Statewide Assessment Standards and Practices*: new and edited policy language in §305, Test Security Policy; the new statewide grade 2 assessment will be added to chart in §701, Overview of Assessment Programs in Louisiana; and new revised and edited achievement level descriptors are added to §1817, End-of-Course Tests.

This document will provide new and updated statewide test information and provide easy access to that information. It was necessary to revise the bulletin at this time to incorporate new policy guidelines, edit previous policy, and revise policy language. Chapter 3, Test Security, has new policy language being added to clarify the addition of EXPLORE and PLAN as new statewide assessments. In Chapter 7, Assessment Program Overview, the testing chart was updated to include the new statewide assessment for grade 2, Iowa Test of Basic Skills (ITBS). The achievement level descriptors in Chapter 18, End-of-Course Tests, were revised for Algebra I, Geometry, English I, and English II to align with new academic standards. As a result of the revisions and edits, the achievement level descriptors in Chapter 18 were renumbered.

Title 28

EDUCATION

Part CXI. Bulletin 118—Statewide Assessment Standards and Practices

Chapter 3. Test Security

§305. Test Security Policy

A. - A.3.f.iv. ...

g. administer published parallel, previously administered, or current forms of any statewide assessment (e.g., Louisiana Educational Assessment Program [LEAP]; *Integrated* LEAP [*i*LEAP]; Graduation Exit Examination [GEE]; Graduation Exit Examination ["old" GEE]; LEAP Alternate Assessment, Level 1 [LAA 1]; LEAP Alternate Assessment, Level 2 [LAA 2]; the English Language Development Assessment [ELDA]; End-of-Course Tests (EOCT) online assessments; forms K, L, M, A, and B and all new forms of the Iowa Tests; or EXPLORE and PLAN as a practice test or study guide.

3.h. - 17. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.7(C) and (G).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1528 (July 2005), amended LR 32:233 (February 2006), LR 33:255 (February 2007), LR 33:424 (March 2007), LR 33:2033 (October 2007), LR 34:65 (January 2008), LR 34:431 (March 2008), LR 34:1351 (July 2008), LR 35:217 (February 2009), LR 37:858 (March 2011), repromulgated LR 37:1123 (April 2011), amended LR 39:1018 (April 2013).

Chapter 7. Assessment Program Overview
§701. Overview of Assessment Programs in Louisiana

A. ...

Name of Assessment Program	Assessment Population	Administered
Kindergarten Screening		
Kindergarten Developmental Readiness Screening Program (KDRSP)	Kindergarten	fall 1987–
Norm-Referenced Tests (NRTs)		
California Achievement Test (CAT/F)	grades 4, 6, and 9	spring 1988–spring 1992 (no longer administered)
California Achievement Test (CAT/5)	grades 4 and 6 grade 8	spring 1993–spring 1997 spring 1997 only (no longer administered)
Iowa Tests of Basic Skills (ITBS) (form L) and Iowa Tests of Educational Development (ITED) (form M)	grades 4, 6, 8, 9, 10, and 11	spring 1998 (no longer administered)
ITBS ITED (form M)	grades 3, 5, 6, and 7 grade 9	spring 1999–spring 2002 (no longer administered)
ITBS ITED (form B)	grades 3, 5, 6, and 7 grade 9	spring 2003–spring 2005 (no longer administered)
ITBS	grade 2	spring 2012–
Criterion-Referenced Tests (CRTs)		
National Assessment of Educational Progress (NAEP)	grades 4, 8, and 12	spring 1990–
Louisiana Educational Assessment Program (LEAP)	grades 3, 5, and 7	spring 1989–spring 1998 (no longer administered)
Graduation Exit Examination (“old” GEE)	grades 10 and 11	spring 1989–spring 2003 (state administered) fall 2003– (district administered)
Louisiana Educational Assessment Program (LEAP) (ELA and Mathematics)	grades 4 and 8	spring 1999–
LEAP (Science and Social Studies)	grades 4 and 8	spring 2000–
Graduation Exit Examination (GEE) (ELA and Mathematics)	grade 10	spring 2001–
GEE (Science and Social Studies)	grade 11	spring 2002–
End-Of-Course Tests (EOCT)	Algebra I	fall 2007–
EOCT	English II	fall 2008–
EOCT	Geometry	fall 2009–

Name of Assessment Program	Assessment Population	Administered
EOCT	Biology	fall 2010–
EOCT	Applied Algebra I form	spring 2011–
EOCT	English III	fall 2011–
EOCT	U. S. History	fall 2012–
EXPLORE	grades 8 and 9	spring 2013
PLAN	grade 10	spring 2013
ACT	grade 11	spring 2013
Integrated NRT/CRT		
Integrated Louisiana Educational Assessment Program (iLEAP)	grades 3, 5, 7, and 9	spring 2006–
iLEAP	grade 9	spring 2010 (last administration of grade 9 iLEAP)
Special Population Assessments		
Louisiana Alternate Assessment, Level 1 (LAA 1)	Students with Individualized Education Programs (IEPs) who meet participation criteria in grades 3–11	spring 2000–2007
LAA 1	ELA and Mathematics (grade spans 3–4; 5–6; 7–8; 9–10); Science (grades 4, 8, and 11)	Revised spring 2008–
LAA 1 ELA and Mathematics	grade 9	spring 2010 (last administration of grade 9 LAA 1)
Louisiana Alternate Assessment, Level 2 (LAA 2) ELA and Mathematics (Grades 4, 8, and 10) Science and Social Studies (Grade 11)	grades 4, 8, 10, and 11	spring 2006–
LAA 2 ELA and Mathematics	grades 5, 6, 7, and 9	spring 2007–
LAA 2 ELA and Mathematics	grade 9	spring 2010 (last administration of grade 9 LAA 2)
LAA 2 Science and Social Studies	grades 4 and 8	spring 2008–
Louisiana Alternate Assessment-B (LAA-B) [“out-of-level” test]	Students with Individualized Education Programs (IEPs) who met eligibility criteria in grades 3–11.	spring 1999–spring 2003 (no longer administered)
English Language Development Assessment (ELDA)	Limited English Proficient (LEP) students in grades K–12	spring 2005–
Academic Skills Assessment (ASA) and ASA LAA 2 form	Students pursuing a State-Approved Skills Certificate (SASC) or GED	spring 2012 (one administration only, spring 2012)

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, Office of Student and School Performance, LR 31:1534 (July 2005), amended LR 32:235 (February 2006), LR 34:66 (January 2008), LR 34:1352 (July

2008), LR 35:218 (February 2009), LR 36:967 (May 2010), LR 37:858 (March 2011), amended LT 38:34 (January 2012), LR 39:1019 (April 2013).

Chapter 18. End-of-Course Tests

Subchapter E. Achievement Level Descriptors

§1817. EOCT Achievement Level Descriptors

A. Algebra I Achievement Level Descriptors

Excellent
Students at this achievement level generally have exhibited the ability to: <ol style="list-style-type: none"> 1. identify the common characteristics of families of linear functions; 2. recognize a linear or nonlinear relationship for data organized in charts or tables; 3. determine whether two linear equations have parallel or perpendicular graphs; 4. solve systems of inequalities; 5. determine geometric probabilities based on the areas of figures; and 6. compare and contrast linear functions algebraically in terms of their rates of change.
Good
Students at this achievement level generally have exhibited the ability to: <ol style="list-style-type: none"> 1. translate between tabular and algebraic representations of real-life situations; 2. compute simple probabilities; 3. select and use appropriate units of measurement in the metric system; 4. analyze real-life relationships that can be modeled by tables representing linear functions; 5. translate among tabular, algebraic, and function notation in real-life situations; 6. make appropriate translations between verbal and symbolic representations; 7. describe characteristics of parallel lines; 8. calculate combinations and permutations to solve problems; and 9. recognize differences among number systems (e.g., whole numbers and irrational numbers).
Fair
Students at this achievement level generally have exhibited the ability to: <ol style="list-style-type: none"> 1. represent and use linear functions to solve real-life problems; 2. select and use appropriate units of measurement to solve problems; 3. translate between tabular and graphical representations of real-life situations; 4. use appropriate function notation when given a verbal statement; 5. use the graph of a linear equation to describe and interpret slope, intercept, point; and 6. evaluate numerical expressions involving positive exponents.
Needs Improvement
Students at this achievement level are generally working toward the ability to: <ol style="list-style-type: none"> 1. use linear functions to solve real-life problems; 2. select and use appropriate units of measurement to solve problems; and 3. translate between tabular and graphical representations of real-life situations.

B. English II Achievement Level Descriptors

Excellent
Students at this achievement level generally have exhibited the ability to: <ol style="list-style-type: none"> 1. evenly develop and elaborate ideas in written compositions using well-chosen evidence to support the central idea; 2. develop written compositions that demonstrate evidence of planning and a logical progression of ideas; 3. use precise and effective language to establish voice in written compositions; 4. differentiate formal adverb use from colloquial use; 5. determine effects of complex literary elements and devices; 6. interpret literary images to make inferences about meaning; 7. analyze elements of humor and purposes of rhetorical devices;

<ol style="list-style-type: none"> 8. compare literary elements and devices across texts; 9. synthesize information within and across texts to draw conclusions; and 10. evaluate usefulness, relevance, and objectivity of information resources.
Good
Students at this achievement level generally have exhibited the ability to: <ol style="list-style-type: none"> 1. include a clear central idea and use relevant evidence and elaboration in written compositions; 2. use varied vocabulary when writing compositions; 3. include sentences that vary in length and structure when writing compositions; 4. recognize errors in verb tense; 5. derive word meanings from roots, prefixes, and suffixes; 6. recognize how an author's word choice relates to tone and purpose; 7. analyze literary devices to identify recurring themes; 8. make inferences about character motivation based on passage details; 9. examine a sequence of information to determine meaning; 10. make predictions based on information or details provided; and 11. determine appropriateness of research sources.
Fair
Students at this achievement level generally have exhibited the ability to: <ol style="list-style-type: none"> 1. develop written compositions with evidence of conscious organization; 2. include some relevant information when writing compositions; 3. use sentences with some varied beginnings when writing compositions; 4. identify fragments and run-on sentences; 5. recognize basic literary elements and devices; 6. summarize information from grade-appropriate texts; 7. extend ideas in texts by making simple inferences; 8. recognize uses of various research sources; and 9. evaluate results of an online search.
Needs Improvement
Students at this achievement level are generally working toward the ability to: <ol style="list-style-type: none"> 1. develop written compositions with evidence of conscious organization; 2. use sentences with some varied beginnings when writing compositions; 3. summarize information from grade-appropriate texts; 4. extend ideas in texts by making simple inferences; and 5. evaluate results of an online search.

C. Geometry Achievement Level Descriptors

Excellent
Students at this achievement level generally have exhibited the ability to: <ol style="list-style-type: none"> 1. define and use trigonometric ratios to solve problems involving right triangles; 2. understand and apply the Pythagorean Theorem in multi-step problems; 3. solve problems in coordinate geometry involving distances; 4. write equations of parallel lines; and 5. find arc lengths of circles.
Good
Students at this achievement level generally have exhibited the ability to: <ol style="list-style-type: none"> 1. solve multi-step problems using properties of radii, chords, secants, and tangents of a circle; 2. write an equation of a line of best fit; 3. calculate the probability of a simple, conditional event; 4. solve real-world and mathematical problems involving volume and surface area of spheres; 5. build a function that models a relationship between two quantities; 6. perform and/or analyze dilations of geometric figures; 7. use similarity criteria for triangles to solve multi-step problems; and 8. analyze and use proportional relationships to solve real-world and mathematical problems.

Fair
Students at this achievement level generally have exhibited the ability to:
<ol style="list-style-type: none"> 1. calculate the volume of a solid when given a diagram; 2. calculate a missing side length using similar triangles; 3. identify a geometric solid when given a set of attributes; 4. describe or interpret patterns in measurement data; 5. derive a rule for a pattern in a number sequence; 6. solve one-step, real-world problems using proportional reasoning; 7. identify the type of transformation performed on a geometric figure; 8. use discrete math (elections, fair games, flow maps, color maps, etc.) and a given set of conditions to determine possible outcomes; and 9. identify a correct informal proof.
Needs Improvement
Students at this achievement level are generally working toward the ability to:
<ol style="list-style-type: none"> 1. solve one-step, real-world problems using proportional reasoning; 2. identify the type of transformation performed on a geometric figure; 3. use discrete math (elections, fair games, flow maps, color maps, etc.) and a given set of conditions to determine possible outcomes; and 4. identify a correct informal proof.

D. ...

* * *

E. English III Achievement Level Descriptors

Excellent
Students at this achievement level generally have exhibited the ability to:
<ol style="list-style-type: none"> 1. develop essays that integrate well-chosen evidence to support the central idea; 2. produce essays that contain varied and fluent sentences; 3. revise sentences for correct use of subjunctive mood ; 4. determine the main idea when it is implicit in a complex text ; 5. develop conclusions based on information synthesized from the text ; 6. analyze an author’s use of complex literary elements in a text ; 7. evaluate arguments in a complex text; 8. demonstrate an understanding of persuasive techniques; 9. evaluate claims in information resources using evidence; and 10. synthesize information from multiple information resources.
Good
Students at this achievement level generally have exhibited the ability to:
<ol style="list-style-type: none"> 1. write essays that are focused and include appropriate elaboration; 2. write essays that include a clear organizational structure and incorporate appropriate vocabulary; 3. revise phrases in a sentence for correct use of parallel structure; 4. draw conclusions based on information stated in a complex text; 5. interpret the author’s use of language in a complex text; 6. determine overall purpose of a complex text; 7. summarize information in a complex text; 8. predict outcomes based on textual evidence; 9. evaluate the usefulness of resources; and 10. determine the reliability or objectivity of information resources.
Fair
Students at this achievement level generally have exhibited the ability to:
<ol style="list-style-type: none"> 1. write essays that provide sufficient and relevant evidence and supporting details; 2. write essays that have a consistent voice and varied sentence structure; 3. revise sentences to avoid split infinitives; 4. select a synonym for a given vocabulary word in a text; 5. identify the main idea based on information stated in a text; 6. make simple inferences based on information in a text; 7. use reasoning skills to draw conclusions;

<ol style="list-style-type: none"> 8. determine the meaning of figurative language in a text; 9. identify relevant information from a variety of resources; and 10. use information from graphic organizers.
Needs Improvement
Students at this achievement level are generally working toward the ability to:
<ol style="list-style-type: none"> 1. write essays that provide sufficient and relevant evidence and supporting details; 2. revise sentences to avoid split infinitives; 3. identify the main idea based on information stated in a text; 4. use reasoning skills to draw conclusions; and 5. identify relevant information from a variety of resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 35:216 (February 2009), amended LR 36:478 (March 2010), LR 37:820 (March 2011), repromulgated LR 37:1123 (April 2011), amended LR 38:36 (January 2012), LR 39:1020 (April 2013).

Heather Cope
Executive Director

1304#025

RULE

Board of Elementary and Secondary Education

Bulletin 126—Charter Schools
(LAC 28:CXXXIX.2709 and 2711)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 126—Charter Schools: §2709. Enrollment of Students, Lottery, and Waitlist and §2711. Lottery Exemptions*. The policy clarifies enrollment policies provides rules to clarify the enrollment process for families of students in charter schools.

Title 28

EDUCATION

Part CXXXIX. Bulletin 126—Charter Schools Charter 27. Charter School Recruitment and Enrollment

§2709. Enrollment of Students, Lottery, and Waitlist

A. - J. ...

K. Beginning with the enrollment process to place students for the 2014-2015 school year, all BESE-authorized charter schools (type 2, type 4, and type 5 charter schools) and type 1b charter schools physically located in Orleans Parish shall participate in the unified enrollment system and expulsion process established by the recovery school district for Orleans Parish, with the exception of virtual charter schools. The department of education shall have discretion to determine on an individual basis whether to require virtual charter schools physically located in Orleans Parish to participate in the unified enrollment system and expulsion process. BESE-authorized charter schools and type 1B charter schools participating in the unified enrollment system and expulsion process may retain admission requirements, geographic preferences, sibling preferences, and disciplinary regulations unrelated to expulsions, if authorized by law or BESE policy. BESE shall retain authority over the approval of amendments to charter contracts for such type 2 and type 4 charter schools for adjustments to grade levels served and enrollment

projections. Schools participating in the unified enrollment and expulsion process shall not be permitted to maintain student waitlists.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1374 (July 2008), amended LR 38:753 (March 2012), repromulgated LR 38:1395 (June 2012), amended LR 38:3120 (December 2012), LR 39:1021 (April 2013).

§2711. Lottery Exemptions

A. ...

B. Students previously enrolled in the charter school and their siblings shall be exempt from a lottery, and shall maintain enrollment or be automatically admitted following the charter school's application period. Students attending a pre-kindergarten or early childhood program operated by a charter school may be considered to have been previously enrolled at the charter school for the purpose of lottery exemptions. Requests by charter schools to apply this lottery exemption for students who attend a publicly-funded program at no cost to the student shall be automatically approved by the LDE for BESE-authorized charter schools, or the charter school's authorizer for other types of charter schools. For a charter school that requests to apply this lottery exemption for students who were admitted to a pre-kindergarten or early childhood program that utilizes admission requirements and/or charges tuition for some or all of its students, the use of the lottery exemption shall be subject to the approval of the LDE for BESE-authorized charter schools, or the charter school's authorizer for other types of charter schools. In such a case, the LDE or the charter school's authorizer, as applicable, shall require the charter school to set enrollment targets that ensure the charter school provides equity of access for at-risk applicants to its kindergarten classes.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1375 (July 2008), amended LR 37:875 (March 2011), LR 39:1022 (April 2013).

Heather Cope
Executive Director

1304#024

RULE

Board of Elementary and Secondary Education

Bulletin 129—The Recovery School District
(LAC 28:CXLV.505)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 129—The Recovery School District*: §505. Return of Schools to LEA. The policy clarifies the process for schools to return to their former local educational agency or an alternate governing authority from the recovery school district.

Title 28 EDUCATION

Part CXLV. Bulletin 129—The Recovery School District Chapter 5. Failed Schools

§505. Return of Schools to LEA

A. - C. ...

D. A non-failing school is eligible for transfer from the jurisdiction of the recovery school district provided it meets all of the following.

1. The school will have been under the jurisdiction of the recovery school district for a minimum of five years as either a direct-run RSD school or a type-5 charter school. A school shall be considered to have been under the jurisdiction of the RSD for five years when five complete school years have passed since the approval of the transfer to the RSD by BESE, regardless of changing operators or site codes for the school since that time. The decision to transfer will be considered at the earliest during the school's fifth year under the jurisdiction of the RSD, with the proposed transfer occurring at the conclusion of that same school year.

2. The school has earned for the past two consecutive years a school performance score (SPS) of 54.0 or above. If the academically unacceptable school (AUS) bar is raised above 50.0, then the school must have earned for the past two consecutive years a school performance score that is at least 4.0 points above the AUS bar as established by BESE pursuant to the statewide school and district accountability system.

a. Beginning with the return eligibility process beginning in the 2013-14 school year, in order to be eligible to choose to transfer from the jurisdiction of the RSD, schools comprised entirely of grades below ninth grade shall have two consecutive school performance scores based on test data from students actually attending that school, rather than test data from a paired school. For schools comprised entirely of grades above eighth grade, both consecutive school performance scores shall include act data for students actually attending the school, and at least one of the school performance scores shall include graduation index and graduation rate data for students actually attending the school.

3. The school elects to transfer from the RSD and has notified BESE in writing, no later than December 1 of the year preceding the effective date of the proposed transfer.

a. Type 5 Charter School. The charter school's governing authority, shall take official board action based on a vote of its membership, in accordance with its by-laws, to notify BESE in writing of its desire to transfer from the jurisdiction of the RSD.

b. Direct-Run RSD School. The superintendent of the RSD, in consultation with the parents of students attending the school, and the school's staff, shall make a recommendation to BESE seeking transfer from the jurisdiction of the RSD.

4. No later than January 1 of the school year preceding the effective date of the proposed transfer, BESE shall make a determination whether or not to allow an eligible non-failing school to seek transfer to its former LEA or an AGA. At that time, BESE may require the school to

agree to comply with certain requirements prior to the effective date of the proposed transfer.

5. If BESE approves the transfer, the former LEA or the AGA must notify BESE, in writing, whether it has agreed to accept jurisdiction of the transferring school no later than March 1 of the school year prior to the effective date of the proposed transfer.

6. The following parties must agree to the transfer no later than April 1 of the school year preceding the effective date of such transfer:

- a. the governing authority of a charter school, if a charter school; or
- b. the superintendent of the RSD, if a direct-run RSD school; and
- c. BESE; and
- d. the recipient LEA or AGA.

E. A direct-run RSD school that is deemed a failing school may be eligible for transfer from the jurisdiction of the recovery school district provided it meets all of the following.

1. The school will have been under the jurisdiction of the recovery school district for a minimum of five years at the conclusion of the school year preceding the effective date of the proposed transfer. A school shall be considered to have been under the jurisdiction of the RSD for five years when five complete school years have passed since the approval of the transfer to the RSD by BESE, regardless of changing operators or site codes for the school since that time. The decision to transfer will be considered at the earliest during the school's fifth year under the jurisdiction of the RSD, with the proposed transfer occurring at the conclusion of that same school year.

2. The school is labeled as in AUS status as defined by the statewide school and district accountability system during its fifth year, or any subsequent year the school remains within the RSD.

3. The school is not undergoing a charter conversion or phase-out, as defined in Subsection J below.

4. The recipient LEA or AGA has agreed to accept the school and has developed a proposal for the school's turnaround.

5. BESE has approved the recipient authority's turnaround proposal for the school.

6. The following parties have agreed to such transfer from the RSD:

- a. the superintendent of the RSD; and
- b. BESE; and
- c. the recipient LEA or AGA.

F. Type 5 Charter Schools. The transfer of a type 5 charter school from the RSD shall become effective on July 1 of the year following BESE's approval of such transfer.

1. The charter school must negotiate a new charter contract agreement with the recipient authority to become either a type 3 or type 4 charter school. A copy of the signed negotiated charter contract agreement must be provided to BESE no later than April 1 preceding the effective date of the proposed transfer. The new charter contract agreement must:

- a. be effective on the date of transfer (July 1);
- b. be consistent with all state and federal laws governing charter school authorization;

c. contain academic performance standards and other requirements for extension and renewal that are equal to or greater than type 5 charter school performance standards as enumerated in BESE Bulletin 126;

d. comply with any transfer conditions previously specified by BESE at the time BESE made the determination to allow the transfer (prior to January 1); and

e. require any school that participated as a type 5 charter school in a unified enrollment system and expulsion process established by the recovery school district pursuant to Bulletin 126 to continue to participate in the unified enrollment system and expulsion process as a type 3 or type 4 charter school.

2. Transfer to a Type 3 Charter School. If the charter school elects to become a type 3 charter school, the non-profit charter organization shall apply to the recipient authority to operate the school. The charter contract agreement must conform to all the laws and requirements governing type 3 charter schools.

3. Transfer to a Type 4 Charter School. If the charter school elects to become a type 4 charter school, the recipient authority must apply to BESE to operate the charter school, with the approval from the charter operator. The charter contract agreement must conform to all the laws and requirements governing type 4 charter schools.

G. - J.4 ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:10.5(A)(1), R.S. 17:10.7(A)(1), R.S. 17:1990(A)(2), R.S. 17:10.5(C), and R.S. 17:10.7(C).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:878 (March 2011), amended LR 38:354 (February 2012), LR 38:1396 (June 2012), LR 39:82 (January 2013), LR 39:1022 (April 2013).

Heather Cope
Executive Director

1304#026

RULE

Board of Elementary and Secondary Education

Bulletin 134—Tuition Donation Rebate Program (LAC 28:CLV.Chapters 1-13)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has adopted *Bulletin 134—Tuition Donation Rebate Program*: §101. Purpose, Scope, and Effect, §103. Definitions, §301. Establishment of a School Tuition Organization, §303. Awarding of Scholarships, §307. Prohibition on Claiming Scholarship Payments for Tax Purposes, §309. Amount of Scholarships, §311. Scholarship and Tuition Payments, §313. Refund of Donations, §501. Donations; Qualifications, §503. Donations; Time, §505. Rebates, §701. Financial Information Report; §703. School Tuition Organization Advertising; §705. Annual Report, §707. Budgeting, §901. General Audits and Financial Reviews, §1101. Background Checks, §1103. Enrollment of Scholarship Recipients, §1105. Tuition; §1107. Transfer/Withdrawal of Scholarship Students, §1109. Testing of Scholarship Students, §1111. Surety Bond, and §1301.

Required Participation in the State Testing Program. The policy provides Rules to govern the implementation of the Tuition Donation Rebate Program in accordance with R.S. 17:6301. This policy establishes the requirements for Student Tuition Organizations, donors, qualifying nonpublic schools, and families receiving tuition assistance through the program.

**Title 28
EDUCATION**

Part CLV. Tuition Donation Rebate Program

Chapter 1. General Provisions

§101. Purpose, Scope, and Effect

A. The purpose of this policy Rule is to set forth the Rules and regulations necessary to implement the provisions of R.S. 47:6301, which allows rebates for donations a taxpayer makes to a school tuition organization which provides scholarships to qualified students that attend a qualified school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1024 (April 2013).

§103. Definitions

A. The words defined in this Section shall have the meanings set forth below whenever they appear in this policy, unless:

1. the context in which they are used clearly requires a different meaning; or
2. a different definition is prescribed for a particular provision.

Administrative Costs—all costs and expenses associated with the operation of a school tuition organization, including promotional costs and the costs associated with administering state testing, other than scholarship awards. Administrative costs shall not exceed 5 percent of any donation.

Donor—a taxpayer who files a Louisiana income tax return, and who makes a donation to a school tuition organization.

Fiscal Year—the fiscal year for the State of Louisiana.

LDE—Louisiana Department of Education

MFP—Minimum Foundation Program

Parent—a parent, guardian, custodian, or other person with authority to act on behalf of the child.

Qualified School—a nonpublic elementary or secondary school in Louisiana which is approved by the Board of Elementary and Secondary Education (BESE) and which complies with the criteria set forth in *Brumfield, et al. v. Dodd, et al., 425 F. Supp 528*.

Qualified Student—a child who is a member of a family that resides in Louisiana with a total household income that does not exceed an amount equal to 250 percent of the federal poverty level based on the federal poverty guidelines established by the Federal Office of Management and Budget and is a student who:

1. is entering kindergarten for the first time;
2. was enrolled in a public school in Louisiana on October 1 and February of the most recent school year; or
3. received a scholarship from a school tuition organization for the previous school year.

School Tuition Organization—a tax exempt organization organized under Section 501(c)(3) of the *Internal Revenue*

Code which provides scholarships to qualified students to attend a qualified school, in adherence with the provisions of this Rule and R.S. 47:6301.

Student with a Disability—a student shall be considered to have a disability if such student has been evaluated by a local education agency (LEA) as defined in R.S. 17:1942, is deemed to have a mental disability, hearing impairment (including deafness), multiple disabilities, deaf-blindness, speech or language impairment, visual impairment (including blindness), emotional disturbance, orthopedic impairment, other health impairment, specific learning disability, traumatic brain injury, dyslexia and related disorders, or autism, and as a result requires special education and related services according to an Individualized Education Program (IEP) or a services plan in accordance with Title 34 of the *Code of Federal Regulations*, Part 300.37.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1024 (April 2013).

Chapter 3. School Tuition Organizations

§301. Establishment of a School Tuition Organization

A. Each school tuition organization shall notify the Louisiana Department of Education (LDE) of its intent to provide educational scholarships to qualified students attending qualified schools.

B. Each school tuition organization shall provide documentary evidence to the LDE that it has been granted an exemption from federal income tax and is established as an organization described in Section 501(c)(3) of the *Internal Revenue Code*.

C. No school tuition organization shall employ, or allow as a board member, any person who has been convicted of or has entered a plea of nolo contendere to a crime listed in R.S. 15:587.1.

D. Each school tuition organization shall develop and implement a written policy, consistent with the provisions of R.S. 15:587.1, through which the organization shall determine whether any applicant for employment, employee, or board member, has been arrested for or convicted of or pled nolo contendere to any criminal offense

1. The written policy shall include:

- a. the requirement to perform criminal background checks on all applicants for employment, employees and board members according to the provisions of R.S. 15:587.1.;

- b. a procedure for the submission of a person's fingerprints, in a form acceptable to the Louisiana Bureau of Criminal Identification and Information (bureau), prior to employment of such person or the appointment of such person as a member of the board.

2. Persons who have submitted fingerprints to the bureau may be temporarily hired pending receipt of the reports from the bureau.

3. Each school tuition organization shall maintain proof of such record checks for the duration of a person's employment and/or membership on the board, and shall be able to provide such records upon request of the LDE.

E. The LDE may bar a school tuition organization from participating in the rebate program if the school tuition organization fails to comply with the requirements of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1024 (April 2013).

§303. Awarding of Scholarships

A. No scholarship shall be designated, referred to, or in any way named after a private entity, nor shall any donation be earmarked by a donor to provide a scholarship for a particular qualified student or a particular qualified school or group of schools; however, this Paragraph shall not prohibit a donation being earmarked for a student with a disability, students with a particular type of disability, or students with any disability.

B. School tuition organizations shall only use applications approved by the LDE in awarding scholarships to qualified students.

C. School tuition organizations shall award scholarships to qualified students on a first-come, first-serve basis, with priority given to students who received a scholarship in the previous year.

D. School tuition organizations shall provide educational scholarships to students without limiting available scholarships to students of only one qualified school or group of schools.

E. School tuition organizations shall document the eligibility of each qualified student for each year that a qualified student receives a scholarship.

F. School tuition organizations shall provide certification to the LDE that scholarships have been issued within 30 days of issuing the scholarships. This certification shall include:

1. information pertaining to students whom the scholarships were awarded;
2. the nonpublic school these students will use the scholarship for;
3. a list of the taxpayers whose donations to the school tuition organization funded the scholarships; and
4. the amount of each taxpayer's donation used to fund a scholarship.

G. Scholarships granted to qualified students shall be portable during the school year and can be used at any qualifying school that accepts a qualified student. If the parent of a qualified student who is receiving a scholarship desires the student to move to a new qualified school during a school year, the scholarship amount may be prorated.

H. Any qualified student receiving a scholarship from a school tuition organization shall be prohibited from receiving any other publicly funded scholarship, voucher, or other form of financial assistance specific to that student for purposes of attending a nonpublic school.

I. A qualified student may receive scholarships from multiple school tuition organizations the total amount of which may not exceed the lesser of actual tuition or:

1. 80 percent of the state average MFP per pupil funding amount for the previous year in the case of a qualified student enrolled in kindergarten through eighth grade; or
2. 90 percent of the state average MFP per pupil funding amount for the previous year in the case of a qualified student enrolled in ninth through twelfth grade.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 39:1025 (April 2013).

§307. Prohibition on Claiming Scholarship Payments for Tax Purposes

A. Any parent who receives scholarship payments in accordance with the provisions of this Rule or R.S. 47:6301 shall not be allowed to claim the amount received as any other credit, deduction, exemption, or rebate under Title 47 of the Louisiana Revised Statutes of 1950.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1025 (April 2013).

§309. Amount of Scholarships

A. The amount of scholarships awarded by a school tuition organization shall equal the amount of donations the organization receives from taxpayers, minus allowable administrative or promotional costs. No less than 95 percent of the monies received by the school tuition organization from taxpayer donations for scholarships shall be used to provide scholarships to students for attendance at a qualified nonpublic school of their parent's choice.

B. The maximum amount for a scholarship provided by the school tuition organization to a qualified student in kindergarten through eighth grade shall not exceed actual tuition and mandatory fees or 80 percent of the state average MFP per pupil funding amount for the previous year, whichever is less.

C. The maximum amount for a scholarship for a qualified student in ninth through twelfth grades shall not exceed actual tuition and mandatory fees or 90 percent of the state average MFP per pupil funding amount for the previous year, whichever is less.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1025 (April 2013).

§311. Scholarship and Tuition Payments

A. School tuition organizations shall distribute scholarship payments in September, December, February, and May of each year as checks made out to a parent of a qualified student that are mailed to the qualifying school where the student is enrolled. The parent shall restrictively endorse each check for deposit into the account of the school. The parent shall not designate any entity or individual associated with the school as the parent's attorney to endorse a scholarship check.

B. Upon receipt of notification from a qualified school that a student who has received a scholarship has ceased to be enrolled in the school, the student tuition organization shall cease making payments to the school for that student.

C. The LDE shall verify that each qualified student has received scholarships not to exceed the lesser of actual tuition and fees at the qualified school or 80 percent of the state average MFP per pupil funding amount for the previous year in the case of a qualified student enrolled in kindergarten through eighth grade, or 90 percent of the state average MFP per pupil funding amount for the previous year in the case of a qualified student enrolled in ninth through twelfth grade. If the total amount of scholarships received by a qualified student has exceeded one of these amounts, as applicable, the school tuition organization that awarded the

scholarship that caused the student's total scholarship amount to exceed this amount shall refund the state the difference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Education, LR 39:1025 (April 2013).

§313. Refund of Donations

A. If, at the end of the state's fiscal year, a donor requests a refund of unexpended funds from his donation, the school tuition organization shall reimburse the donor the full amount of unexpended funds otherwise available to be used on scholarships, exclusive of funds available for administrative costs. If the donor does not elect to receive a refund, the school tuition organization may retain and carry forward the funds indefinitely or for a shorter period of time if so indicated by the donor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1026 (April 2013).

Chapter 5. Donations to School Tuition Organizations and Rebates

§501. Donations; Qualifications

A. There shall be a rebate allowed for donations made by taxpayer during a taxable year to a school tuition organization which provides scholarships to qualified students to attend a qualified school.

B. To qualify for a rebate pursuant to R.S. 47:6301, the donor must be a taxpayer who files a Louisiana income tax return.

C. The LDE shall certify and issue a receipt to a taxpayer indicating the actual amount of the taxpayer's donation to a school tuition organization which was used to fund a scholarship after all of the requirements of this Rule have been satisfied.

D. The Department of Revenue shall provide a standardized format for the receipt to be issued by the LDE to a school tuition organization. The Department of Revenue shall require a taxpayer to provide a copy of the receipt when claiming the rebate authorized by this Rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Education, LR 39:1026 (April 2013).

§503. Donations; Time

A. Upon making a donation to a school tuition organization, the donor shall indicate the duration of time which the school tuition organization may retain and carry forward the donation. The time may be indicated as being in perpetuity or for a stated period of time coinciding with a fiscal year of the state of Louisiana, the minimum of which shall not be less than 12 months or one fiscal year, whichever occurs later.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1026 (April 2013).

§505. Rebates

A. In order for a donation to qualify for the rebate, the donation shall be used by the school tuition organization to provide scholarships for tuition and fees for students to attend a qualified school in accordance with the provisions of this Rule and R.S. 47:6301.

B. The amount of the rebate to the donor shall be equal to the actual amount of the taxpayer's donation used by a school tuition organization to fund a scholarship to a qualified student, which shall not include administrative costs.

C. The rebate may be paid only after the conclusion of the school year and only when all of the following requirements have been satisfied.

1. The school tuition organization certifies to the LDE that the donation made by the taxpayer has funded a scholarship for a qualified student.

2. The LDE verifies that the student was not enrolled in a public school in Louisiana on 1 or February 1 of that school year. If the qualified student is enrolled in public school on February 1 of that school year, the amount of the rebate shall be equal to the actual amount expended by the school tuition organization on scholarships, which shall not include administrative costs and shall be prorated as applicable.

3. The LDE transmits an electronic file to the Department of Revenue verifying that the LDE has issued taxpayer receipts. The electronic file should include the following information for each receipt:

- a. the date the LDE issued the receipt;
- b. the name and social security number or Louisiana taxpayer identification number of each taxpayer; and
- c. the amount of each taxpayer's donation that funded student scholarships for the previous school year.

4. The taxpayer completes a rebate form, provided by the Department of Revenue, and submits both that form and the LDE-issued receipt to the Department of Revenue.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1026 (April 2013).

Chapter 7. School Tuition Organization Fiscal and Advertising Responsibilities

§701. Financial Information Report

A. Each school tuition organization shall prepare a financial information report that complies with uniform financial accounting standards, to be submitted to the LDE by the deadline set by the LDE each year. The report shall be prepared by a certified public accountant and shall be submitted to the LDE. The report shall contain a certification from an auditor that the report is free of material misstatements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1026 (April 2013).

§703. School Tuition Organization Advertising

A. Each school tuition organization shall adequately advertise the availability of scholarships to the public, with an emphasis on notifying parents of students in public schools that received a letter grade of "D" or "F."

B. School tuition organizations must perform at least the following activities to adequately advertise the availability of scholarships to the public, with an emphasis on notifying parents of students in public schools that received a letter grade of "D" or "F":

1. advertise scholarship availability on the school tuition organization's website;

2. host at least one public information session regarding scholarship availability in proximity to a "D" or "F" public school; and

3. on a per parish basis, advertise scholarship availability to parents of students of "D" and "F" school at least equally to parents of students of "A", "B", and "C" schools.

C. For school tuition organization to adequately advertise the availability of scholarships to the public, all school tuition organization advertisements must:

1. specify the monetary amount of student scholarships;

2. indicate scholarship availability on a first-come, first-serve basis, with priority given to students who received a scholarship in the previous year;

3. provide scholarship application instructions and deadlines;

4. provide the school tuition organization's contact information; and

5. indicate student eligibility requirements.

D. For school tuition organization to adequately advertise the availability of scholarships to the public, all school tuition organization advertisements must not:

1. discriminate against students for any reason, including, but not limited to, race or ethnicity, religion, academic performance, students with a disability, or gender;

2. guarantee enrollment to any nonpublic school;

3. indicate preference for any nonpublic school;

4. indicate that a school tuition organization's student application directly affects the status of a student's application for participation in the Student Scholarships for Educational Excellence Program; or

5. contradict any other requirement listed in R.S. 47:6301 or this policy Rule.

F. School tuition organizations are required to submit all advertisements intended to communicate with external stakeholders, including donors, families, and nonpublic schools, to the LDE within thirty working days of when the advertisement was first used. The LDE will review the advertisement for conformity with policy and statute. Such review will include but not be limited to the completeness and accuracy of any information regarding the timeframes and tax implications of making a donation. If the advertisement presents information that does not conform with policy and statute, then the LDE may require the school tuition organization to make appropriate changes to the advertisement.

G. The LDE may bar a school tuition organization from participating in the rebate authorized under this Rule if the school tuition organization fails to comply with the advertising Rules and regulations promulgated by the LDE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1026 (April 2013).

§705. Annual Report

A. Each school tuition organization shall annually provide a public report to the LDE that contains information regarding all scholarships awarded or granted in the previous fiscal year. The report shall be prepared by a certified public accountant and shall be submitted to the department no later than the first day of January each year. The report shall contain:

1. the name and address of the school tuition organization;

2. the total number and total dollar amount of donations received during the previous fiscal year;

3. the total number and total dollar amount of educational scholarships awarded to qualified students;

4. the total amount expended on administrative costs;

5. the percentage breakdown of donations expended on scholarship and administrative costs during the previous fiscal year;

6. the actual tuition and fee amounts published by the qualifying schools which enrolled a student with a scholarship from that school tuition organization;

7. the total amount of donations received by the school tuition organization;

8. the total amount of donations made by each donor during the previous calendar year;

9. the amount of each taxpayer's donations expended on scholarships during the previous school year; and

10. the social security number or Louisiana taxpayer identification number of each donor.

B. Each school tuition organization and the LDE shall redact all social security numbers before publicly releasing any annual report.

C. The LDE shall provide the Department of Revenue with copies of all such reports by February 1 of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1027 (April 2013).

§707. Budgeting

A. No more than 5 percent of any donation shall be used by the school tuition organization for administrative or promotional costs.

B. Each school tuition organization shall provide for the administration of the state tests associated with the school and district accountability system to those participating students to whom it has awarded scholarships in grades that require testing under the state's accountability and testing laws for public schools. Such costs shall not be included as part of any scholarship award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1027 (April 2013).

Chapter 9. Review of School Tuition Organizations

§901. General Audits and Financial Reviews

A. The LDE may conduct a general or specific audit or a financial review or audit of a school tuition organization as deemed necessary by the LDE. The LDE may bar a school tuition organization from participating in the rebate authorized under this Section if the school tuition organization intentionally or substantially fails to comply with the requirements of this Rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1027 (April 2013).

Chapter 11. Qualified Schools

§1101. Background Checks

A. Each qualified school must conduct criminal background checks on its employees in compliance with La. R.S. 17:15 and exclude from employment any person not

permitted by state law to work in a nonpublic school. The LDE may bar an otherwise qualified school from participating in the rebate authorized under this Rule if the otherwise qualified school fails to comply with the requirements of R.S. 17:15.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1027 (April 2013).

§1103. Enrollment of Scholarship Recipients

A. Qualified schools shall admit qualified students for enrollment based on the letter grade of the public school for which the qualified student was attending or would have attended. Qualified students from public schools that received a letter grade "F" or "D," or any variation thereof, shall be given the first priority.

B. If more first-time qualified students who are otherwise eligible apply than there are seats available, the school shall conduct a random selection process that ensures all qualified and otherwise eligible students an equal chance for admission; however, the qualified school may give preference for the following:

1. siblings of students already enrolled in the qualified school; and
2. qualifying students who had previously enrolled at a different qualified school and who are otherwise eligible.

C. Enrollment of scholarship recipients in a school qualified under the provisions of this chapter and under the provisions of the Student Scholarships for Educational Excellence Program that has been approved for less than two years shall not exceed 20 percent of such school's total student enrollment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1028 (April 2013).

§1105. Tuition

A. Qualified schools enrolling participating students shall not charge a higher total tuition and fee amount to a qualified student than is charged to all students enrolled at the school.

B. Each qualified school enrolling participating students shall annually provide to each school tuition organization that has provided a scholarship to a student enrolled in that school, the actual tuition and fee amounts charged to all students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1028 (April 2013).

§1107. Transfer/Withdrawal of Scholarship Students

A. If a student who has received a scholarship ceases to be enrolled in a qualified school, the school shall immediately notify the respective student tuition organization and the LDE that the student is no longer enrolled.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1028 (April 2013).

§1109. Testing of Scholarship Students

A. Using funds retained for administrative costs by the school tuition organization, schools enrolling participating students shall annually administer the state test associated

with the school and district accountability system to measure learning gains in math and language arts to such students in grades that require testing under the state's accountability and testing laws for public schools.

B. The LDE shall not incur any expense for the administration of the state tests to students applying for tuition scholarships from a school tuition organization.

C. The qualified school shall provide the parents of each student who was tested a copy of the student's test results on an annual basis, beginning with the first year the student is tested.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1028 (April 2013).

§1111. Surety Bonds

A. Any qualified school that receives more than \$50,000 in scholarship donations from a school tuition organization shall demonstrate its financial viability by filing, prior to the start of a school year, a surety bond payable to the school tuition organization in an amount equal to the aggregate amount of donations expected to be received during the school year or by filing, prior to the start of a school year, financial information with the qualified school tuition organization demonstrating its financial viability. However, a qualified school that has been in business for more than five years shall not be required to post a surety bond.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1028 (April 2013).

Chapter 13. Testing

§1301. Required Participation in the State Testing Program

A. Nonpublic schools that enroll scholarship recipients in grade levels with mandatory state accountability testing in math or English shall:

1. develop and submit annually to the LDE a test security policy approved by its board in compliance with Bulletin 118, Chapter 3;
2. follow BESE's test security policy as stated in Bulletin 118;
3. name a school test coordinator and provide contact information to the LDE;
4. be responsible for all required accountability and demographic coding of testing documents; and
5. investigate and report any testing irregularities and/or violations of test security to the department.

B. The school test coordinator for the participating nonpublic school shall attend the pretest workshop designed for the participating nonpublic schools as well as any additional training required to administer the state tests.

1. The school test coordinator shall provide to the LDE with a valid work email address. Personal email addresses (Yahoo, Hotmail, Google, etc.) will not be accepted.

2. When the school test coordinator changes, the participating nonpublic school shall provide the name and contact information of the new school test coordinator to the LDE on school letterhead within 15 days of the change in appointment;

C. The LDE staff shall have the authority to:

1. monitor the implementation of the state testing;

2. require changes to the test security policy as it deems necessary;

3. require changes to the testing plan as it deems necessary;

4. conduct site visits during testing; and

5. conduct an investigation into testing irregularities and/or violations, and void any scores deemed to be invalid.

D. The LDE staff shall:

1. notify participating nonpublic schools of any new requirements in state testing; and

2. evaluate annually the testing plan to ensure full compliance with policies and procedures

E. The LEA shall not test any students enrolled in participating nonpublic schools unless there is a written agreement between the LEA and the participating nonpublic school to this effect. No LEA shall ever be required to test students attending the participating nonpublic schools under the Tuition Donation Rebate program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1028 (April 2013).

§1303. Annual Report on Program Implementation

A. The LDE shall compile a public report which lists the name of all qualified schools receiving scholarship recipients pursuant to the provisions of this Rule, the number of scholarship recipients attending each qualified school, and the results of the state's accountability and testing laws for scholarship recipients in each grade.

B. The LDE shall release the public report on the LDE's website the same time the LDE traditionally releases reports regarding individual school performance on state tests.

C. State test scores will be reported publicly for the entirety of the students participating in the tuition donation rebate program in accordance with the federal FERPA statute (20 U.S.C. 1232g) and regulations (34 C.F.R. 99.1 et seq.). The LDE shall not include the name or any other identifying information for individual students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1029 (April 2013).

Heather Cope
Executive Director

1304#027

RULE

Board of Elementary and Secondary Education

Bulletin 135—Health and Safety
(LAC 28:CLVII.Chapters 1 and 3)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted *Bulletin 135—Health and Safety*. Policies relating to student health and safety were removed from *Bulletin 741—Louisiana Handbook for School Administrators* to create *Bulletin 135—Health and Safety*. The creation of this bulletin will assist educators and health professionals in providing for the health and safety of students. Pursuant to R.S. 17:436.3, Sections 305 and 307 of this Rule are being jointly promulgated by the Board of

Nursing and the Board of Elementary and Secondary Education.

Title 28 EDUCATION

Part CLVII. Bulletin 135—Health and Safety

Chapter 1. Foreword

§101. Purpose

A. This bulletin contains policies passed by the Board of Elementary and Secondary Education (BESE) regarding the health and safety of students while at school, traveling on school transportation, and at school sponsored events.

B. Sections of this bulletin have been jointly promulgated by the Louisiana State Board of Nursing (LSBN) and BESE. Any waivers, deletions, additions, amendments, or alterations to policies within those sections shall be approved by both BESE and LSBN.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1029 (April 2013).

Chapter 3. Health

§301. Health Screening

A. Every LEA, during the first semester of the school year or within 30 days after the admission of any students entering the school late in the session, shall test the sight, including color screening, for all first grade students, and hearing of each and all students under their charge, except those students whose parent or tutor objects to such examination. Such testing shall be conducted by appropriately trained personnel, and shall be completed in accordance with the schedule established by the American Academy of Pediatrics.

B. Upon the request of a parent, student, school nurse, classroom teacher, or other school personnel who has reason to believe that a student has a need to be tested for dyslexia, that student shall be referred to the school building level committee for additional testing. Local school systems may provide for additional training for school nurses to aid in identifying dyslexic students. Refer to §1123 in *Bulletin 741—Louisiana Handbook for School Administrators*.

C. The LEA shall keep a record of such examination, shall be required to follow up on the deficiencies within 60 days, and shall notify in writing the parent or tutor of every student found to have any defect of sight or hearing. A written report of all such examinations shall be made to the state superintendent of education but shall not be made available to the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:2112.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1029 (April 2013).

§303. Immunizations

A. Each student entering any school within the state for the first time, at the time of registration or entry, shall present satisfactory evidence of immunity to or immunization against vaccine-preventable diseases according to a schedule approved by the Department of Health and Hospitals (DHH), Office of Public Health (OPH) or shall present evidence of an immunization program in progress. Each person entering the sixth grade in any school within the state shall present satisfactory evidence of immunity to or immunization against vaccine preventable diseases according to a schedule approved by the

Department of Health and Hospitals, Office of Public Health or shall present evidence of an immunization program in progress.

1. The schedule shall include, but not be limited to measles, mumps, rubella, diphtheria, tetanus, whooping cough, poliomyelitis, and hemophilus influenzae type B invasive infections.

2. The schedule may provide specific requirements based on age, grade in school, or type of school. At its own discretion and with the approval of the OPH, an educational institution or licensed day care center may require immunizations or proof of immunity more extensive than required by the schedule approved by the Office of Public Health.

B. A student transferring from another LEA in or out of the state shall submit either a certificate of immunization or a letter from his personal physician or a public health clinic indicating immunizations against the diseases in the schedule approved by the Office of Public Health having been performed, or a statement that such immunizations are in progress.

C. If booster immunizations for the diseases enumerated in the schedule approved by the Office of Public Health are advised by that office, such booster immunizations shall be administered before the student enters a school system within the state.

D. School administrators shall be responsible for checking students' records to see that the provisions of this Section are enforced and electronically transmit immunization compliance reports to the OPH through the Louisiana Immunization Network for Kids Statewide (LINKS) when the school operates an existing student-specific electronic data system.

E. No student seeking to enter any school shall be required to comply with the provisions of this Section if the student or the student's parent or guardian submits either a written statement from a physician stating that the procedure is contraindicated for medical reasons, or a written dissent from the student or his parent or guardian is presented.

F. In the event of an outbreak of a vaccine-preventable disease at the location of a school, the principal is empowered, upon the recommendation of the OPH, to exclude from attendance unimmunized students until the appropriate disease incubation period has expired or the unimmunized person presents evidence of immunization.

G. Meningococcal Disease; Information; Immunization

1. LEAs that provide information relative to immunizations are required to provide parents and/or guardians with information relative to the risks associated with meningococcal disease. The information shall include the availability, effectiveness and known contraindications of immunization against this disease, causes and symptoms of the disease, how the disease is spread, and places where a student may be immunized and where parents may obtain additional information. Information shall be updated annually if new information is available.

2. Students entering sixth grade shall provide evidence of current immunization against meningococcal disease as a condition of entry into the sixth grade at any school in the state.

3. A student who is 11 years old and is entering a grade other than the sixth grade shall provide satisfactory

evidence of current immunization against meningococcal disease as a condition of entry into such grade at any school in the state.

4. A student who is 11 years old and is participating in an approved home study program pursuant to R.S. 17:236.1 shall provide satisfactory evidence of current immunization against meningococcal disease to BESE, as required.

5. The provisions of Paragraphs 2-4 of this Subsection shall not apply to students whose parent or legal guardian have submitted either a signed waiver stating that the student shall not be immunized against meningococcal disease for personal reasons, a written statement from a physician stating that the immunization is contraindicated for medical reasons, or a written explanation indicating the student is unable to comply due to a shortage of available vaccines against meningococcal disease.

6. The administrator of each school is responsible for checking students' records to ensure that the provisions of this Section are enforced.

H. Human Papillomavirus

1. Each LEA that provides information relative to immunizations shall provide to the parent or legal guardian of each student in grades 6-12 information relative to the risks associated with human papillomavirus and the availability, effectiveness, and known contraindications of immunizations against human papillomavirus.

2. This information will be provided by the LDE and updated annually if new information on human papillomavirus becomes available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:170, R.S. 17:170.2, R.S. 17:170.2, and R.S. 17:170.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1029 (April 2013).

§305. Administration of Medication

A. Administration of Medication

1. Each local educational governing authority shall establish guidelines based upon the joint policy of BESE and the Louisiana State Board of Nursing for the administration of medications which shall include but not be limited to the following provisions.

2. Any waivers, deletions, additions, amendments, or alterations to this joint policy shall be approved by both boards.

B. Written Orders, Appropriate Containers, Labels and Information

1. Medication shall not be administered to any student without an order from a Louisiana, or adjacent state, licensed physician or dentist, and it shall include the following information:

- a. the student's name;
- b. the name and signature of the physician/dentist;
- c. the physician/dentist's business address, office phone number, and emergency phone numbers;
- d. the frequency and time of the medication;
- e. the route and dosage of the medication; and
- f. a written statement of the desired effects and the child specific potential of adverse effects.

2. Medication shall be provided to the school by the parent or guardian in the container that meets acceptable pharmaceutical standards and shall include the following information:

- a. name of pharmacy;
- b. address and telephone number of pharmacy;

- c. prescription number;
 - d. date dispensed;
 - e. name of student;
 - f. clear directions for use, including the route, frequency, and other as indicated;
 - g. drug name and strength;
 - h. last name and initial of pharmacist;
 - i. cautionary auxiliary labels, if applicable; and
 - j. physician's or dentist's name.
3. Labels of prepackaged medications, when dispensed, shall contain the following information in addition to the regular pharmacy label:
- a. drug name;
 - b. dosage form;
 - c. strength;
 - d. quantity;
 - e. name of manufacturer and/or distributor; and
 - f. manufacturer's lot or batch number.

C. Administration of Medication—General Provisions

1. During the period when the medication is administered, the person administering the medication shall be relieved of all other duties. This requirement does not include the observation period required in Paragraph C.5.

2. Except in the case of a trained unlicensed diabetes care assistant administering diabetes medications or in life threatening situations, trained unlicensed school employees may not administer injectable medications.

3. All medications shall be stored in a secured locked area or locked drawer with limited access except by authorized personnel.

4. Only oral medications, inhalants, topical ointments for diaper rash, and emergency medications shall be administered at school by unlicensed personnel.

5. Each student shall be observed by a school employee for a period of 45 minutes following the administration of medication. This observation may occur during instruction time.

6. School medication orders shall be limited to medication which cannot be administered before or after school hours.

D. Principal

1. The principal shall designate at least two employees to receive training and administer medications in each school.

E. Teacher

1. The classroom teacher who is not otherwise previously contractually required shall not be assigned to administer medications to students.

2. A teacher may request in writing to volunteer to administer medications to his/her own students.

3. The administration of medications shall not be a condition of employment of teachers employed subsequent to July 1, 1994.

4. A regular education teacher who is assigned an exceptional student shall not be required to administer medications.

F. School Nurse

1. The school nurse, in collaboration with the principal, shall supervise the implementation of the school

policies for the administration of medications in schools to insure the safety, health, and welfare of the students.

2. The school nurse shall be responsible for the training of non-medical personnel who have been designated by each principal to administer medications in each school. The training shall be at least six hours and include but not be limited to the following provisions:

- a. proper procedures for administration of medications including controlled substances;
- b. storage and disposal of medications;
- c. appropriate and correct record keeping;
- d. appropriate actions when unusual circumstances or medication reactions occur; and
- e. appropriate use of resources.

3. No employee other than a registered nurse, licensed medical physician, an appropriate licensed health professional, or hired and trained unlicensed nursing personnel or unlicensed assistive personnel as defined by the Louisiana State Board of Nursing shall be required to perform an outside tracheotomy suctioning procedure on any child in an education setting. However, nothing shall prohibit an employee who volunteers to perform such procedure and who complies with the training and demonstration requirement from being allowed to perform such procedure on a child in an educational setting.

G. Parent/Guardian

1. The parent/guardian who wishes medication administered to his/her student shall provide the following:

- a. a letter of request and authorization that contains the following information:
 - i. name of the student;
 - ii. clear instructions;
 - iii. prescription number, if any;
 - iv. current date;
 - v. name, degree, frequency, and route of medication;
 - vi. name of physician or dentist;
 - vii. printed name and signature of parent or guardian;
 - viii. emergency phone number of parent or guardian; and
 - ix. statement granting or withholding release of medical information;
- b. written orders for all medications to be given at school, including annual renewals at the beginning of the school year;
- c. a prescription for all medications to be administered at school, including medications that might ordinarily be available over the counter;
- d. a list of all medications that the student is currently receiving at home and school, if that listing is not a violation of confidentiality or contrary to the request of the parent/guardian or student;
- e. a list of names and telephone numbers of persons to be notified in case of medication emergency in addition to the parent or guardian and licensed prescriber;
- f. arrangements for the safe delivery of the medication to and from school in the original labeled container as dispensed by the pharmacist; the medication shall be delivered by a responsible adult;

g. unit dose packaging shall be used whenever possible.

2. All aerosol medications shall be delivered to the school in premeasured dosage.

3. No more than a 35 school day supply of medication shall be kept at school.

4. The initial dose of a medication shall be administered by the student's parent/guardian outside the school jurisdiction with sufficient time for observation for adverse reactions.

5. The parent/guardian shall also work with those personnel designated to administer medication as follows:

a. cooperate in counting the medication with the designation school personnel who receives it and sign a drug receipt form;

b. cooperate with school staff to provide for safe, appropriate administration of medications to students, such as positioning, and suggestions for liquids or foods to be given with the medication;

c. assist in the development of the emergency plan for each student;

d. comply with written and verbal communication regarding school policies;

e. grant permission for school nurse/physician consultation; and

f. remove or give permission to destroy unused, contaminated, discontinued, or out-of-date medications according to the school guidelines.

H. Student Confidentiality

1. All student information shall be kept confidential.

NOTE: There is a set of guidelines developed by an administration of medication task force and approved by the State Board of Nursing, which may be used by LEAs in developing their local administration of medication guidelines. These guidelines are available upon request in the BESE office.

I.1. Notwithstanding any provision of law or any rule, regulation, or policy to the contrary, the governing authority of each public elementary and secondary school shall permit the self-administration of medications by a student with asthma or the use of auto-injectable epinephrine by a student at risk of anaphylaxis, provided that the student's parent or legal guardian provides the school in which the student is enrolled with the following documentation:

a. written authorization for the student to carry and self-administer such prescribed medications;

b. written certification from a licensed medical physician or other authorized prescriber that the student:

i. has asthma or is at risk of having anaphylaxis;

ii. has received instruction in the proper method of self administration of the student's prescribed medications to treat asthma or anaphylaxis;

c. written treatment plan from the student's licensed medical physician or authorized prescriber for managing asthma or anaphylactic episodes. The treatment plan must be signed by the student, the student's parent or other legal guardian, and the student's licensed medical physician or other authorized prescriber and shall also contain the following information:

i. the name, purpose, and prescribed dosage of the medications to be self-administered;

ii. the time or times the medications are to be regularly administered and under what additional special circumstances the medications are to be administered;

iii. the length of time for which the medications are prescribed;

d. any other documentation required by the governing authority of the public elementary or secondary school.

2. The documentation required by Paragraph 1 of this Subsection shall be kept on file in the office of the school nurse or other designated school official.

3. The governing authority of the public elementary and secondary school shall inform the parent or other legal guardian of the student in writing that the school and its employees shall incur no liability as a result of any injury sustained by the student from the self-administration of medication used to treat asthma or anaphylaxis. The parent or legal guardian of the student shall sign a statement acknowledging that the school shall incur no liability and that the parent or other legal guardian shall indemnify and hold harmless the school and its employees against any claims that may arise relating to the self-administration of medications used to treat asthma or anaphylaxis.

4. For the purposes of the Subsection:

Auto-Injectable Epinephrine—a medical device for the immediate self-administration of epinephrine by a person at risk for anaphylaxis;

Inhaler—a medical device that delivers a metered dose of medication to alleviate the symptoms of asthma.

5. A student who has been granted permission to self-administer medication pursuant to this Subsection shall be allowed to carry and store with the school nurse or other designated school official an inhaler or auto-injectable epinephrine, or both, at all times.

6. Permission for the self-administration of asthma medications or use of auto-injectable epinephrine by a student shall be effective only for the school year in which permission is granted. Permission for self-administration of asthma medications or the use of auto-injectable epinephrine by a student shall be granted each subsequent school year, provided all of the requirements of this Subsection are fulfilled.

7. Upon obtaining permission to self-administer asthma medication or to use auto-injectable epinephrine pursuant to this Subsection, a student shall be permitted to possess and self-administer such prescribed medication at any time while on school property or while attending a school sponsored activity.

8. A student who uses any medication permitted pursuant to this Subsection in a manner other than prescribed shall be subject to disciplinary action; however, such disciplinary action shall not limit or restrict such student's immediate access to such prescribed medication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:436.1 and R.S. 17:436.1(J).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education and the Louisiana State Board of Nursing, LR 39:1030 (April 2013).

§307. Diabetes Management and Treatment

NOTE: This Rule was developed in coordination with the Louisiana State Board of Nursing (LSBN). Any waivers, deletions, additions, amendments, or alterations to this policy shall be approved by both BESE and LSBN.

A. Diabetes Treatment Plans

1. Any public elementary or secondary school student who seeks care for his diabetes while at school or participating in a school related activity shall submit a diabetes management and treatment plan on an annual basis.

2. Such plan shall be developed by a physician licensed in Louisiana or adjacent state, or other authorized health care prescriber licensed in Louisiana who is selected by the parent or guardian to be responsible for such student's diabetes treatment.

3. The diabetes management plan shall be kept on file in the school in which the child is enrolled and shall include:

a. an evaluation of the student's level of understanding of his condition and his ability to manage his diabetes;

b. the diabetes-related healthcare services the student may receive or self-administer at school or during a school-related activity;

c. a timetable, including dosage instructions, of any diabetes medications to be administered to the student or self-administered by the student; and

d. the signature of the student (if age appropriate), the student's parent or legal guardian, and the physician or other authorized health care prescriber responsible for the student's diabetes treatment.

4. The plan shall be submitted annually to the principal or appropriately designated school personnel:

a. prior to or within five school days after the beginning of each school year;

b. upon enrollment, if the student enrolls in the school after the beginning of the school year;

c. as soon as practicable following the student's receipt of a diagnosis of diabetes; or

d. as warranted by changes in the student's medical condition.

5. The school nurse will be given not less than five school days to develop the Individualized Healthcare Plan (IHP) and shall implement the IHP within 10 school days upon receipt of the diabetes treatment plan.

a. The school nurse must assess the stability of the student's diabetes both at home and in the school setting prior to the development of the IHP for care in the school setting.

6. The parent or legal guardian shall be responsible for all care related to the student's diabetes management and treatment plan until:

a. the IHP is developed;

b. the parents or legal guardian have agreed and signed; and

c. the diabetes management and treatment plan is put into place by the school nurse.

7. The school nurse shall be responsible for implementing and/or supervising the diabetes management and treatment plan for the student on campus, during school related activities, and during school related transportation of the student for the current year.

B. Provision of Care—General Information

1. Upon receipt of the diabetes management and treatment plan, the school nurse shall conduct a nursing assessment of the student in his educational environment and develop the IHP.

2. The school nurse shall provide care to a student with diabetes, or assist a student with the self-care of his diabetes, in accordance with the student's diabetes management and treatment plan and IHP.

3. Diabetes management and treatment shall be provided to a student with diabetes during the school day and any school-related activity. School-related activities include but are not limited to extra curricular activities and sports.

4. No physician, nurse, school employee, school, or school district shall be liable for civil damages or subject to disciplinary action under professional licensing regulation or school disciplinary policies as a result of the activities of an unlicensed diabetes care assistant.

a. Exception. If a professional licensing board has cause to believe that a licensee, within its jurisdiction, improperly trained an unlicensed diabetes care assistant or improperly assessed the ability of an unlicensed diabetes care assistant to perform his or her designated functions, then the professional licensing board may bring disciplinary action against the licensee.

5. With written permission from a student's parent or legal guardian, a school may provide a school employee with responsibility for providing transportation or supervision of a student with diabetes during an off-campus activity with an information sheet that provides the following information:

a. the identity of the student;

b. a description of potential emergencies that may occur as a result of the student's diabetes and the appropriate responses to such emergencies; and

c. the telephone number of the person(s) to be contacted in case of an emergency.

C. Unlicensed Diabetes Care Assistants—General Information

1. The use of unlicensed diabetes care assistants is optional. Schools shall not be required to utilize unlicensed diabetes care assistants.

2. An unlicensed diabetes care assistant is defined as a school employee who is not a healthcare professional, who is willing to complete training requirements established by this rule, and is determined competent by the school nurse to provide care and treatment to students with diabetes.

3. A school employee shall not be subject to any penalty or disciplinary action for refusing to volunteer or serve as an unlicensed diabetes care assistant.

4. If a school chooses to use unlicensed diabetes care assistants to provide care for students with diabetes at school or during a school-related activity, all of the rules of this section shall be followed.

5. Supervision requirements for unlicensed diabetes care assistants shall be as follows.

a. Unlicensed diabetes care assistants may serve under the supervision of the school nurse or school principal for diabetes management care.

b. Unlicensed diabetes care assistants shall serve under the supervision of a school nurse for medication administration.

i. Where a school nurse is not physically present, he or she must be available by phone and within a reasonable mile radius for immediate access to the school.

6. Protocols for administration of medication for the treatment of diabetes shall be consistent with Bulletin 741, §1129.

D. Role of Unlicensed Diabetes Care Assistants

1. An unlicensed diabetes care assistant may provide diabetes care to a student only in accordance with the student's diabetes management and treatment plan.

a. The student's parent or legal guardian must sign an agreement authorizing such care.

b. The agreement must be on file with the school.

2. An unlicensed diabetes care assistant, in accordance with the diabetes management and treatment plan on file for a student, may provide diabetes care to a student, or assist a student in the self-care of his diabetes by:

a. checking and recording blood glucose and ketone levels;

b. responding to blood glucose and ketone levels;

c. administering emergency treatment as prescribed in the student's diabetes treatment plan and/or IHP;

d. following carbohydrate counting guidelines established by the school district or school; and

e. following medication administration protocols established by the school district or school.

3. Methods for training unlicensed diabetes care assistants include:

a. at least six hours of diabetes management and treatment instruction;

b. at least five return demonstrations of 100 percent skill competency; and

c. annual skill competency demonstration.

4. The unlicensed diabetes care assistant must be monitored by the school nurse for compliance of treatment plan and skill level.

5. The unlicensed diabetes care assistant must notify the school nurse of any changes in the status of the student.

6. During the specific time spent on management and/or treatment of the student with diabetes, the unlicensed diabetes care assistant shall be relieved of all other duties.

7. In performance of their duties, unlicensed diabetes care assistants shall be exempt from any applicable state law or rule that restricts the activities that may be performed by a person who is not a healthcare professional.

E. The Role of the School Nurse

1. The school nurse, in collaboration with the principal, shall supervise the implementation of the school policies for diabetes management and treatment and for the administration of medications in the schools to ensure the safety, health, and welfare of the students.

2. The school nurse or other healthcare professional with expertise in caring for persons with diabetes, in accordance with their authorized scope of practice, shall be responsible for the training and competency evaluation of non-medical personnel who have volunteered to serve as a diabetes care assistant.

3. The curriculum for training the unlicensed diabetes care assistants shall include, but not be limited to the following topics:

a. recognize the signs and symptoms of hyperglycemia and hypoglycemia;

b. understand the details of the student's diabetes management treatment plan and when to contact the school nurse for additional directions on how to treat the student's change in condition;

c. understand the proper action to take if student's blood glucose levels are outside the target ranges specified in his diabetes management and treatment plan;

d. perform finger sticks to check blood glucose levels, check urine ketones levels, properly record the results, and notify the school nurse;

e. administration of medication as ordered by physician in accordance with school policies, procedures and the student's diabetes management treatment plan;

f. recognize complications which require emergency assistance;

g. understand carbohydrate counting, the recommended schedules and food intake for meals and snacks for a student with diabetes, the effect of physical activity on blood glucose levels, and the proper actions to be taken if a student's schedule is disrupted during school or any school related activity;

h. review of school or school district policies related to confidentiality and blood borne pathogens.

F. The Role of the Student with Diabetes in Self Care

1. In accordance with a student's diabetes management and treatment plan the school shall permit the student to attend to the self-management, administration of medications, treatment and documentation as outlined in his diabetes management plan.

H. The Role of the Principal

1. In consultation with the school nurse, if one is available, the principal may:

a. receive diabetes management and treatment plan;

b. seek school employee who is willing to be trained to serve as the unlicensed diabetes care assistant;

c. ensure the school has at least one unlicensed diabetes care assistant, if the school has a full time nurse, or at least three unlicensed diabetes care assistants if the school has no full time nurse;

d. require the school to develop carbohydrate count standard guides for those students who eat school provided lunches;

e. supervise the implementation of the school policies for diabetes management and treatment and for the administration of medications in the schools to ensure the safety, health, and welfare of the students;

f. ensure appropriate supervision of the unlicensed diabetes care assistant.

I. The Role of the Parent/Legal Guardian

1. Annually submit a copy of the student's diabetes management and treatment plan to the principal of the school in which in student is enrolled.

2. Give consent to implementation of the diabetes management and treatment plan.

3. Work with appropriate school personnel in development of the individualized healthcare plan and provision of care for the student until the individualized healthcare plan and diabetes management and treatment plan can be implemented.

4. Provide written calculation of carbohydrates in meals when lunch is provided from home.

5. Provide necessary supplies and equipment to deliver diabetes management and treatment plan.

6. Follow protocols for administration of medication consistent with Bulletin 741, §1129.G.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:436.3.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education and the Louisiana State Board of Nursing, LR 39:1033 (April 2013).

§309. Communicable Disease Control

A. The LDE will work cooperatively with the Louisiana Department of Health and Hospitals for the prevention, control and containment of communicable diseases in schools.

B. Students are expected to be in compliance with the required immunization schedule.

1. The principal is required under R.S. 17:170 to exclude children from school attendance who are out of compliance with the immunizations required by this statute.

2. School personnel will cooperate with public health personnel in completing and coordinating all immunization data, waivers and exclusions, including the necessary Vaccine Preventable Disease Section's school ionization report forms (EPI-11, 11/84) to provide for preventable communicable disease control.

C. The superintendent may exclude a student or staff member for not more than five days from school or employment when reliable evidence or information from a public health officer or physician confirms him/her of having a communicable disease or infestation that is known to be spread by any form of casual contact and is considered a health threat to the school population. Such a student or staff member may be excluded unless the public health or determines the condition is no longer considered contagious.

D. Mandatory screening for communicable diseases that are known not to be spread by casual contact shall not be required as a condition for school entry or for employment or continued employment.

E. Irrespective of the disease presence, routine procedures shall be used and adequate sanitation facilities shall be available for handling blood or bodily fluids within the school setting or on school buses. School personnel shall be trained in the proper procedures for handling blood and bodily fluids and these procedures shall be strictly adhered to by all school personnel

F. Any medical information that pertains to students or staff members, proceedings, discussions and documents shall be confidential information. Before any medical information is shared with anyone in the school setting, a "need-to-know" review shall be made which includes the parent/guardian, student if age 18, employee or his/her representative unless the information is required to meet the mandates of federal or state law or regulation, or BESE policy.

G. Age-appropriate instruction on the principal modes by which communicable diseases are spread and the best

methods for the restriction and prevention of these diseases shall be taught to students and inservice education provided to all staff members.

H. A local superintendent may only exclude a student or employee from a school or employment setting when reliable evidence or information from a public health officer or physician confirms that a student/staff member is known to have a communicable disease or infection that is known not to be spread by casual contact if a review panel is held to ensure due process.

I. Due Process Procedures

1. The Review Panel

a. Communicable diseases that are known not to be spread by casual contact (e.g., AIDS, Hepatitis B and other like diseases) will be addressed on a case-by-case basis by a review panel.

b. Panel membership:

i. the physician treating the individual;

ii. a health official from the local parish health department;

iii. a child/employee advocate (e.g., nurse, counselor, child advocate, social worker, employee representative, etc., from in or outside the school setting) approved by the infected person or parent/guardian;

iv. a school representative familiar with the student's behavior in the school setting or the employee's work situation (in most cases the building principal or in the case of a special education student, a representative may be more appropriate);

v. either the parent/guardian of a child, a student if 18, employee, or their representative; and

vi. the school system superintendent.

c. The superintendent will assign a stenographer to record the proceedings.

d. The superintendent will designate the chair of the panel.

e. The chair of the review panel will designate the panel member who will write the proposal for decision.

2. Case Review Process

a. Upon learning of a student/staff member with the LEA who has been identified as having a communicable disease that is known not to be spread by casual contact, the superintendent shall:

i. immediately consult with the physician of the student/staff member or public health officer who has evidence of a present or temporary condition that could be transmitted by casual contact in the school setting:

(a). if the public health officer indicates the student/staff member is well enough to remain in the school setting and poses no immediate health threat through casual contact to the school population because of their illness, the student/staff member shall be allowed to remain in the school setting while the review panel meets;

(b). if the public health officer indicates the student/staff member is currently not well enough to remain in the school setting and/or the affected individual currently has evidence of an illness or infection that poses a potential health threat through casual contact to the school population because of the illness, the student/staff member shall be excluded from the school setting while the review panel meets;

(c). if the public health officer recommends exclusion because a public health threat exists, the review panel will discuss the conditions under which the individual may return to school;

ii. immediately contact the review panel members to convene a meeting to explore aspects of the individual's case;

iii. submit to the parent/guardian or infected person if 18 or older, a copy of the Communicable disease control policy;

iv. observe all federal and state statutes, federal and state regulations, and all BESE policies pertaining to provision of special educational services.

3. The Review Panel Process

a. The review panel shall meet within 24-48 hours to review the case. The following aspects should be considered in that review:

i. the circumstances in which the disease is contagious to others;

ii. any infections or illnesses the student/staff member could have as a result of the disease that would be contagious through casual contact in the school situation;

iii. the age, behavior, and neurologic development of the student;

iv. the expected type of interaction with others in the school setting and the implications to the health and safety of others involved;

v. the psychological aspects for both the infected individual remaining in the school setting;

vi. consideration of the existence of contagious disease occurring within the school population while the infected person is in attendance;

vii. consideration of a potential request by the person with the disease to be excused from attendance in school or on the job;

viii. the method of protecting the student/staff member's right to privacy, including maintaining confidential records;

ix. recommendations as to whether the student/staff member should continue in the school setting or if currently not attending school, under what circumstances he/she may return;

x. recommendations as to whether a restrictive setting or alternative delivery of school programs is advisable;

xi. determination of whether an employee would be at risk of infection through casual contact when delivering an alternative educational program;

xii. determination of when the case should be reviewed again by the panel; and

xiii. any other relevant information.

b. Proposal for Decision

i. Within three operational days (i.e., a day when the school board central office is open for business) after the panel convenes, the superintendent shall provide a written decision to the affected party based on the information brought out in the review panel process and will include the rationale for the decision concerning school attendance for the student or continuation of employment for staff member.

ii. If the decision is to exclude the affected person from the school setting because of the existence of a temporary or present condition that is known to be spread by casual contact and is considered a health threat, the written decision shall include the conditions under which the exclusion will be reconsidered.

iii. If the affected person is a special education student, an individualized education program conference must be convened to determine the appropriateness of the program and services for the student.

4. Appeal Process

a. Rehearing Request

i. The parent, guardian or affected person who considers the proposal for decision unjust may request a rehearing, in writing, directed to the superintendent within three days of the date of the decision. Grounds for requesting a rehearing are limited to:

(a) new evidence or information that is important to the decision; or

(b) substantial error of fact.

ii. The superintendent, within 48 hours from the date of receipt of the request for rehearing, shall either grant or deny the request for rehearing. If the request for rehearing is granted, the chair shall reconvene the same panel that originally heard the matter within five business days of the date the hearing is granted.

iii. Within three operational days (a day when the school system's central office is open for business) after the rehearing, the superintendent shall submit the decision to the parent/guardian or affected person.

b. Request for a Local Board Decision

i. The parent/guardian, affected person or their representative, may make a final written appeal to the president of the local board of education within five operational days after the superintendent's decision. The board shall meet within three operational days and hear the student/staff member's appeal along with the proposal for decision and superintendent's decision. Within two business days of the hearing, the board shall render its decision in writing with copies sent to the superintendent, health department official, and parent/guardian or affected person.

ii. Should the superintendent deny the request for rehearing, the appellant may appeal to the local board of education by exercising the process in Subparagraph b.

iii. Review Panel Request for Appeal. If the proposal for decision or the superintendent's decision is contrary to the majority opinion of the review panel, a majority of the panel has the right to appeal either decision in the same manner stated in the appeal process.

5. General

a. If the affected student cannot attend school, the LEA will provide an alternative education setting.

i. If the public health officer determines there is a risk of infection to an employee through casual contact while delivering this program, the employee will not be required to provide educational services.

ii. If the public health officer determines there is no risk of infection to an employee, the employee will be expected to participate in the delivery of educational services.

b. The review panel member who is serving as the advocate for the infected individual (or another person designated by the panel and approved by the parent/guardian, or the infected person) will serve as the liaison between the student/staff member, family and attending physician as it relates to the school setting.

c. These procedures in no way limit or supersede the procedural due process requirements established in 29 USC 706(7), R.S. 17:1941, 7946, and 20 USC 1400-1485 et seq.

6. Confidentiality

a. All persons involved in these procedures shall be required to treat all proceedings, deliberations, and documents as confidential information. Records of the proceedings and the decisions will be kept by the superintendent in a sealed envelope with access limited to only those persons receiving the consent of the parent/guardian or infected person as provided in 20 USC 1232(g).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(10)(15); R.S. 17:170; R.S. 17:437; R.S. 17:1941; 20 USCS 1232.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1035 (April 2013).

§311. School Health Forms

A. LEAs may implement the use of the standardized school health forms to eliminate the duplication of information submitted to schools and school nurses relative to health information and screenings, allergies, illnesses, sports physicals, medication administration, and prescribed procedures.

B. These forms will be made available for download via the Internet on the LDE website and on the Louisiana Department of Health and Hospitals web site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:5.12., 20 USCS 6301 et seq., and 20 USCS 1232.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1037 (April 2013).

§313. Non-Complex Health Procedures

A. The term *noncomplex health procedure* shall mean a task which is safely performed according to exact directions, with no need to alter the standard procedure, and which yields predictable results. It shall include the following:

1. modified activities of daily living which require special instruction such as toileting/diapering, bowel/bladder training, toilet training, oral/dental hygiene, lifting/positioning, and oral feeding;

2. health maintenance procedures such as postural drainage, percussion, tracheostomy suctioning, and gastrostomy feeding and monitoring of these procedures;

3. screenings such as growth, vital signs, hearing, vision, and scoliosis.

B. No city or parish school board shall require any employee other than a registered nurse, licensed medical physician, or an appropriate licensed health professional to perform noncomplex health procedures until all the following conditions have been met.

1. A registered nurse or a licensed medical physician and, when appropriate, another licensed health professional employed by a city or parish school board, has assessed the health status of the specific child in his specific educational setting and has determined that, according to the legal standards of the respective licensed health professional

performing such procedure, the procedure can be safely performed, the results are predictable, and the procedure can be delegated to someone other than a licensed health professional following documented training.

2. The registered nurse or the licensed medical physician and, when appropriate, another licensed health professional shall train, in his or her area of expertise, at least two such employees to perform noncomplex health procedures on the specific child in his educational setting. The employees shall be given not less than four hours of training in the area of noncomplex health procedures.

3.a. Following the training provided for in Paragraph 2, no noncomplex health procedure, except screenings and activities of daily living such as toileting/diapering, toilet training, oral/dental hygiene, oral feeding, lifting, and positioning may be performed unless prescribed in writing by a physician licensed to practice medicine in the state of Louisiana or an adjacent state.

b. The employee, other than the registered nurse, licensed medical physician, or appropriate licensed health professional shall be required to complete, under the direct supervision or coordination of a registered nurse, a minimum of three satisfactory demonstrations. Upon satisfactory completion of these noncomplex health procedures, the registered nurse, licensed medical physician, or appropriate licensed health professional and the trainee shall sign a standard form indicating that the trainee has attained the prescribed level of competency. A copy of this form shall be kept on file by the school system.

4. Individuals who are required to perform noncomplex health procedures and have been trained according to the provisions of this Section, may not decline to perform such service at the time indicated except as exempted for reasons as noted by the licensed medical physician or registered nurse. The reasons for such exemption shall be documented and certified by the licensed medical physician or a registered nurse within seventy-two hours.

5. Any employee shall have the right to request that another school board employee be present while he or she is performing noncomplex health procedures for a student, to serve as a witness to the procedure. After making such a request, the employee shall not be required to perform noncomplex health procedures without such a witness.

C. For the purposes of this Section:

Employee—any appropriate member of the education staff.

D. Each city and parish school board shall provide the necessary safety equipment, materials, and supplies to each employee who performs noncomplex health procedures as provided in this Section. Such safety equipment, materials, and supplies shall include but shall not be limited to gloves, anti-bacterial soaps and wipes, paper towels, and masks.

E. Notwithstanding any provision of law or any rule, regulation, or policy to the contrary, no employee other than a registered nurse, licensed medical physician, an appropriate licensed health professional, or hired and trained unlicensed nursing personnel or unlicensed assistive personnel as defined by the Louisiana State Board of Nursing shall be required to perform an tracheostomy suctioning procedure on any child in an educational setting. However, nothing in this Section shall prohibit an employee

who volunteers to perform such procedure and who complies with the training and demonstration requirements as provided in Paragraphs B.2 and 3 of this Section from being allowed to perform such procedure on a child in an educational setting.

F. For purposes of this Section, appropriate licensed health professional shall include a licensed practical nurse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:436(A)(2) and (E).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1037 (April 2013).

Heather Cope
Executive Director

1304#028

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—High Schools (LAC 28:CXV.2317)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—The Louisiana Handbook for School Administrators*: §2317, High Schools. The policy establishes a voluntary community service diploma endorsement program for students who complete an exemplary number of community service hours during their high school career as authorized by Act 295 of the 2012 Regular Session of the Legislature. The policy provides for rules and guidelines for the implementation such program.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 23. Curriculum and Instruction

§2317. High Schools

A. - I.1. ...

J. Community Service Diploma Endorsement

1. LEAs may allow students to earn a community service diploma endorsement.

2. Entering freshmen in 2013-2014 and beyond may earn the community service diploma endorsement by completing documented community service according to the following schedule:

- a. ninth grade—10 hours;
- b. tenth grade—20 hours;
- c. eleventh grade—25 hours;
- d. twelfth grade—25 hours;
- e. total—80 hours.

3. The LEAs shall collect documentation of community service hours on forms provided on the LDE website.

4. Students transferring into a participating LEA after the ninth grade or students graduating early may receive an endorsement provided that the minimum requirement for each year they attend a participating LEA is met and a total of 80 community service hours are completed prior to graduation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7, R.S. 17:154, R.S. 17:1944, R.S. 17:1945, and R.S. 17:264.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 36:1485 (July 2010), LR 37:1137 (April 2011), LR 38:754 (March 2012), LR 39:1038 (April 2013).

Heather Cope
Executive Director

1304#029

RULE

Department of Environmental Quality Office of the Secretary Legal Division

Incorporation by Reference of 40 CFR 60
(LAC 33:III.3003)(AQ339ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air regulations, LAC 33:III.3003 (Log #AQ339ft).

This Rule is identical to federal regulations found in 40 CFR 60 and 77 FR 159, pages 49490-49600, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3985 or P.O. Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule. This Rule will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule updates the references to July 1, 2012, for Standard Performance for New Stationary Sources, 40 CFR Part 60, Subpart AAA. In addition, this Rule incorporates by reference the provisions of 40 CFR 60 Subpart OOOO into Louisiana's air quality regulations. Subpart OOOO establishes new source performance standards for the crude oil and natural gas production, transmission, and distribution industry. Section 111(c)(1) of the Clean Air Act (CAA) authorizes EPA to delegate its authority to implement and enforce new source performance standards to any state which submits adequate regulatory procedures.

“(c) State implementation and enforcement of standards of performance.

(1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing standards of performance for new sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this chapter to implement and enforce such standards.”

LDEQ seeks delegation of 40 CFR 60 Subpart OOOO—Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution. Therefore, this subpart will be incorporated by reference at LAC 33:III.3003.

The basis and rationale for this Rule are to incorporate by reference the provisions of 40 CFR 60 Subpart OOOO.

This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33
ENVIRONMENTAL QUALITY**

Part III. Air

**Chapter 30. Standards of Performance for New
Stationary Sources (NSPS)**

Subchapter A. Incorporation by Reference

**§3003. Incorporation by Reference of 40 Code of
Federal Regulations (CFR) Part 60**

A. Except for 40 CFR Part 60, Subpart AAA, and as modified in this Section, standards of performance for new stationary sources, published in the *Code of Federal Regulations* at 40 CFR Part 60, July 1, 2012, are hereby incorporated by reference as they apply to the state of Louisiana. Also incorporated by reference are the following revisions to 40 CFR Part 60: Subpart OOOO as promulgated on August 16, 2012, in the *Federal Register*, 77 FR 49490-49600.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 22:1212 (December 1996), amended LR 23:1681 (December 1997), LR 24:1287 (July 1998), LR 24:2238 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1239 (July 1999), LR 25:1797 (October 1999), LR 26:1607 (August 2000), LR 26:2460, 2608 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 28:2179 (October 2002), LR 29:316 (March 2003), LR 29:698 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2446 (October 2005), LR 32:809 (May 2006), LR 32:1596 (September 2006), LR 33:1620 (August 2007), LR 33:2092 (October 2007), LR 33:2626 (December 2007), LR 34:1391 (July 2008), LR 35:1107 (June 2009), LR 36:2273 (October 2010), LR 37:2990 (October 2011), LR 38:1230 (May 2012), amended by the Office of the Secretary, Legal Division, 38:2754 (November 2012), LR 39:1039 (April 2013).

Herman Robinson, CPM
Executive Counsel

1304#014

RULE

**Department of Environmental Quality
Office of the Secretary
Legal Division**

Regulatory Permit for Flaring of Materials Other than
Natural Gas (LAC 33:III.319)(AQ322)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air regulations, LAC 33:III.319 (AQ322).

This Rule provides for a regulatory permit which will authorize air emissions from the flaring of materials other than natural gas (e.g., propane, ethylene, propylene, ammonia). The authorization will become effective only upon notification by the department that the application

required by the regulatory permit has been determined complete. R.S. 30:2054(B)(9)(a) allows LDEQ to develop regulatory permits for certain sources of air emissions provided the conditions in R.S. 30:2054(B)(9)(b) are satisfied. Pursuant to R.S. 30:2054(B)(9)(b)(viii), all regulatory permits shall be promulgated in accordance with the procedures provided in R.S. 30:2019, Promulgation of Rules and Regulations (i.e., the Administrative Procedure Act, R.S. 49:950 et seq.). The basis and rationale for this Rule are to establish a regulatory permit to authorize air emissions from the flaring of materials other than natural gas (e.g., propane, ethylene, propylene, ammonia). This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33
ENVIRONMENTAL QUALITY**

Part III. Air

Chapter 3. Regulatory Permits

**§319. Regulatory Permit for Flaring of Materials
Other than Natural Gas**

A. Applicability

1. This regulatory permit authorizes the flaring of gaseous materials other than natural gas (e.g., propane, ethylene, propylene, ammonia) resulting from metering, purging, and maintenance operations, subject to the requirements established herein, upon notification that the department has determined the application (i.e., notification form) submitted in accordance with Subsection G of this Section to be complete. The material to be flared may be supplemented with natural gas.

2. The material to be flared must have a higher heating value greater than or equal to 300 Btu per standard cubic foot.

B. The flare must be capable of accommodating the maximum amount of material to be combusted at any point during the flaring event.

C. Opacity

1. Smoke. The emission of smoke shall be controlled so that the shade or appearance of the emission is not darker than 20 percent average opacity, except that the emissions may have an average opacity in excess of 20 percent for not more than one 6-minute period in any 60 consecutive minutes.

2. Particulate Matter. The emission of particulate matter shall be controlled so that the shade or appearance of the emission is not denser than 20 percent average opacity, except that the emissions may have an average opacity in excess of 20 percent for not more than one 6-minute period in any 60 consecutive minutes.

3. Emissions of smoke or suspended particulate matter that pass onto or across a public road and create a traffic hazard by impairment of visibility, as defined in LAC 33:III.111, or intensify an existing traffic hazard condition are prohibited.

4. The owner or operator of the flare shall conduct a 6-minute opacity reading in accordance with method 9 of 40 CFR 60, Appendix A, upon request of the department. Results shall be kept on-site and available for inspection by the Office of Environmental Compliance.

D. The authorization for the flaring event associated with the specific metering, purging, or maintenance operation addressed by the application submitted in accordance with Subsection G of this Section shall remain effective for 60 days following the date on which the department determines that the application is complete.

E. Flaring events with a duration of more than 10 calendar days shall not be authorized by this regulatory permit and must be approved separately by the department.

F. When an ozone action day has been declared by the department, flaring of ethylene or propylene shall be restricted to between the hours of 4 p.m. and 10 a.m.

G. Notification Requirements

1. The following information shall be submitted to the Office of Environmental Services using the appropriate form provided by the department:

- a. name of the owner or operator;
- b. material to be flared;
- c. estimated volume of the material to be flared;
- d. reason for the flaring event;
- e. physical location;
- f. date(s) and expected duration of the flaring event; and
- g. estimated emissions of criteria pollutants and toxic air pollutants (TAPs) associated with the flaring event. TAPs are listed in LAC 33:III.5112, Tables 51.1 and 51.3.

2. A copy of the notification required by Paragraph G.1 of this Section shall be submitted to the appropriate DEQ regional office.

3. A separate notification shall be submitted for each flaring event.

H. Monitoring, Recordkeeping, and Reporting

1. The volume of material combusted during the flaring event shall be monitored using a flow meter. Alternatively, the volume may be determined using engineering calculations.

2. The following information shall be recorded and submitted to the Office of Environmental Services no later than 30 calendar days after completion of the flaring event:

- a. date(s) and duration of the flaring event;
- b. actual volume of material flared including calculations if the volume was not monitored using a flow meter; and
- c. actual criteria pollutant and TAP emissions associated with the flaring event.

I. In accordance with LAC 33:III.223, Table 1, the fee for this regulatory permit shall be \$300 (fee number 1710). There shall be no annual maintenance fee associated with this regulatory permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 39:1039 (April 2013).

Herman Robinson, CPM
Executive Counsel

1304#059

RULE

**Office of the Governor
Board of Examiners of Certified Shorthand Reporters**

Continuing Education (LAC 46:XXI.603 and 607)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., the Louisiana Board of Examiners of Certified Shorthand Reporters has amended the continuing education rules.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XXI. Certified Shorthand Reporters

Chapter 6. Continuing Education

§603. Continuing Education Credits

A. Beginning January 1, 1991, and thereafter, each certificate holder shall be required to obtain at least 12 continuing education credits during each two-year continuing education cycle. Each continuing education cycle shall consist of two consecutive years beginning January 1 of the odd-numbered year and ending December 31 of the even-numbered year, inclusive. The board shall award one continuing education credit for each half hour of instruction time. For the two-year cycle beginning January 1, 2013 and each two-year cycle thereafter, four of the required 12 continuing education credits shall be instructions pertaining to Louisiana court reporting ethics and CSR board rules and regulations.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554 and 2557.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 17:32 (January 1991), amended LR 20:412 (April 1994), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:2419 (November 2007), LR 35:1881 (September 2009), LR 39:1040 (April 2013).

§607. Maintenance of Record

A. ...

B. On or before December 31 of each even-numbered calendar year, each reporter issued a certificate by the board shall submit or cause to be submitted to the board in written record or continuing education credits earned by the reporter for the preceding two calendar years.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 17:33 (January 1991), amended LR 17:578 (June 1991), LR 19:1539 (December 1993), amended by the Office of the Governor, Board of Certified Shorthand Reporters, LR 33:2419.9 (November 2007), LR 35:1881 (September 2009), LR 39:1040 (April 2013).

Vincent P. Borrello, Jr.
Chair

1304#057

RULE

Office of the Governor Commission on Law Enforcement and Administration of Criminal Justice

Innocence Compensation Fund (LAC 22:III.Chapters 81-87)

In accordance with the provision of R.S. 15:1204, R.S. 15:1207, and R.S. 49:950 et seq., the Administrative Procedure Act, the Commission on Law Enforcement and Administration of Criminal Justice hereby adopts rules and regulations relative to the innocence compensation fund.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part III. Commission on Law Enforcement and Administration of Criminal Justice Subpart 8. Innocence Compensation

Chapter 81. Authority and Definitions

§8101. Authority

A. Rules and regulations are hereby established by the Louisiana Commission on Law Enforcement and Administration of Criminal Justice for the administration of the Innocence Compensation Fund by order of Act 696 of the 2012 Louisiana Legislature, R.S. 15:572.8(N), (R), and (S).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.8(S) et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 39:1041 (April 2013).

§8103. Definitions

A. The following terms as used in these regulations, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings.

Commission—the Louisiana Commission on Law Enforcement.

Court—the court ordering payment pursuant to R.S. 15:592.8.

Factual Innocence—the petitioner did not commit the crime for which he was convicted and incarcerated nor did he commit any crime based upon the same set of facts used in his original conviction.

Fund—the Innocence Compensation Fund.

Petitioner—one who has been convicted of and imprisoned for crimes of which they are factually innocent as determined by a court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.8(S) et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 39:1041 (April 2013).

Chapter 83. Eligibility and Application Process

§8301. Eligibility

A. To be eligible for payments from the Innocence Compensation Fund pursuant to the provisions of R.S. 15:572.8, a petitioner must have been awarded compensation by the district court in which the original conviction was obtained, and the parties have exhausted their ability to have the judgment reviewed by the appellate courts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.8(S) et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 39:1041 (April 2013).

§8303. Application Process

A. Petitioners wishing to receive payments from the Innocence Compensation Fund shall file an application with the commission (application available online at www.lcle.la.gov).

B. Applications must be signed and dated by the petitioner and, if applicable, his legal representative. Only original signatures, no copies, will be accepted.

C. Unless the court awarding compensation has served a copy of the judgment upon the commission, the petitioner must attach a certified copy of the court judgment to the application or order awarding compensation pursuant to R.S. 15:572.8.

D. If a court enters a judgment or order that a petitioner is entitled to additional compensation, the petitioner must file a new application attaching a certified copy of the new court order or judgment awarding the additional compensation.

E. If a petitioner becomes eligible for additional compensation, the petitioner may file a new application with the commission for the additional compensation to which he is entitled. If the amount of additional compensation to which the petitioner is entitled is clear from the previous court judgment or order awarding compensation, the petitioner need not obtain a new court judgment or order for the additional compensation. The petitioner must attach a certified copy of the previous court judgment or order awarding compensation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.8(S) et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 39:1041 (April 2013).

Chapter 85. Payments

§8501. Payments from the Innocence Compensation Fund

A. The commission will only make payments in amounts and at times specifically ordered by a court judgment or order pursuant to R.S. 15:572.8.

B. Supplemental payments will be made by the commission in accordance with the provisions of the judgment after verification of petitioner's current mailing address.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.8(S) et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 39:1041 (April 2013).

Chapter 87. Administration and Annual Report

§8701. Administration

A. In accordance with R.S. 15:572.8(N)(1), the Innocence Compensation Fund is administered by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.8(S) et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 39:1041 (April 2013).

§8703. Annual Report

A. In accordance with R.S. 15:572.8(R), the commission will submit an annual report on the Innocence Compensation Fund to the governor and the legislature on or before April 1 of each year.

B. The annual report will include the number of awards and the total amount of funds distributed during the preceding year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.8(S) et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 39:1042 (April 2013).

Joseph M. Watson
Executive Director

1304#038

RULE

**Office of the Governor
Crime Victims Reparations Board**

Limits on Awards (LAC 22:XIII.503)

In accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and R.S. 46:1801 et seq., the Crime Victims Reparations Act, the Crime Victims Reparations Board hereby promulgates rules and regulations regarding the awarding of compensation to applicants.

Title 22

**CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT**

Part XIII. Crime Victims Reparations Board

Chapter 5. Awards

§503. Limits on Awards

A. - D.3.b. ...

4. The board may reimburse lost wages/earnings as follows:

a. 80 percent of the gross weekly wage of the victim. For seasonal or part time wages, the amount shall be calculated at 80 percent of the average weekly wage;

b. for loss of income from work by the parent or legal guardian of a minor victim who must miss work to obtain or provide the medically indicated services or care for the personal injury.

5. ...

6. If the victim cannot return to work, the lost wage period may include future lost wages.

D.7. - K.2. ...

L. Child Care Expenses

1. Pre-existing child care costs are not reimbursable if those same costs were being incurred prior to the crime.

2. - 3. Repealed.

M. - O.3.b....

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1801 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Crime Victims Reparations Board, LR 20:539 (May 1994), amended LR 22:710 (August 1996), LR 24:328 (February 1998), LR 25:26 (January 1999), LR 26:1019 (May 2000), LR 29:577 (April 2003), LR 31:1330 (June 2005), LR 32:242

(February 2006), LR 35:65 (January 2009), LR:37:1605 (June 2011), LR 39:1042 (April 2013).

Lamarr Davis
Chairman

1304#037

RULE

**Department of Health and Hospitals
Board of Examiners for Speech-Language
Pathology and Audiology**

General Requirements

(LAC 46:LXXV.107, 109, 121, 123, 125, 130, and 701)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 37:2656(c), the Louisiana Board of Examiners for Speech-Language Pathology and Audiology has implemented a Rule that provisional SLP assistants who wish to place their license on inactive status, which freezes the three year limit of time to hold said license, are required to renew annually and complete continuing education. This requirement mirrors the Rule currently in place for other licensees who claim inactive status. The board has revised the rule regarding the approved examination in audiology and speech-language pathology to address upcoming changes being made by the educational testing service. The board has added a rule regarding volunteer services to clarify that rendering services, whether on a paid or volunteer basis, requires a license, as well as, added a rule regarding telepractice to clarify that a license is required. The board has promulgated a rule regarding the expedited licensing of military personnel and the spouses of military personnel in response to Act 276 of the 2012 Legislative Session.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LXXV. Speech Pathology and Audiology

Chapter 1. General Rules

§107. Qualifications for Licensure

A. - H.4.c.ii. ...

iii. Licensees on inactive status may retain their license by payment of the annual renewal fee. In order to resume the practice of speech-language pathology or audiology, licensees on inactive status shall demonstrate completion of five clock hours of continuing education in the area of licensure for each year that inactive status was maintained (maximum of 25 hours).

I. - J.2. ...

K. Examination Requirement—Speech-Language Pathology License, Provisional Speech-Language Pathology License, Audiology License, Provisional Audiology License

1. Evidence of a passing score on the LBESPA-approved examination in audiology or speech-language pathology shall be submitted to LBESPA by the testing agency administering the examination. Scores received directly from the applicant are not acceptable for licensing purposes. The passing score shall be the score determined by the testing agency at the time the applicant completes the examination.

2. If an individual has never held a license to practice audiology or speech-language pathology in another state, and if the degree program was completed greater than ten years from the date of application, the passing score on the specialty area examination for speech/language pathology or audiology must have been obtained within the last five years.

3. - 4. Repealed.

L. - L.1.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:706 (October 1988), amended LR 22:346 (May 1996), LR 27:197 (February 2001), repromulgated LR 27:1690 (October 2001), amended LR 28:1781 (August 2002), LR 30:2308 (October 2004), LR 33:2192 (October 2007), LR 37:2393 (August 2011), LR 39:1042 (April 2013).

§109. Application Procedures

A. - I. ...

J. An applicant may be granted only one 60-day period to work, with the exception of expedited military trained applicants and spouses, while his/her initial application is being processed. No additional grace period may be granted to an applicant, regardless of whether the application is a new license or a request to reinstate or upgrade a license.

K. - N.

O. Temporary Registration during a Declared Public Health Emergency

1. In a public health emergency lawfully declared as such by the governor of Louisiana, the requirement for a Louisiana license as an audiologist, speech-language pathologist, or speech-language pathology assistant may be waived by the board at that time to those out of state audiologists, speech-language pathologists, or speech-language pathology assistants, whose licenses, certifications or registrations are current and unrestricted in another jurisdiction of the United States, for a period of time not to exceed the duration and scope of R.S. 29:769(E), as more particularly set forth in this Section.

2. - 7. ...

P. Volunteer Services. Individuals seeking to provide services on a voluntary basis shall hold an unrestricted license in the area of practice, shall meet all of the qualifications for license set forth by this Chapter, and shall abide by the Code of Ethics.

Q. Licensing of Individuals with Military Training and Experience; Licensing of Military Spouses

1. Expedited application of licensure shall be granted to individuals who have completed a military program of training and been awarded a military occupational specialty in the area of audiology or speech-language pathology or to a military spouse licensed, certified or registered in another jurisdiction while the military-training applicant or military spouse is satisfying the requirement for licensure.

a. Applications shall be submitted in accordance with §109.

b. Military-trained applicants shall submit with the application a copy of current military-issued identification and military orders.

c. Applicants who are the spouse of military personnel shall submit with the application a copy of current military-issued identification, marriage license, and an

affidavit attesting that applicant is married to military personnel.

2. In accordance with the 60-day grace period, military applicants shall submit:

a. military-trained—official, primary-source documentation verifying requirements met in accordance with §107;

b. military spouse—official, primary-source documentation verifying requirements met in accordance with §107 and §111.

3. Applications of individuals with military training and experience and military spouses shall be expedited.

4. The provisions of this Section shall not apply to any applicant receiving a dishonorable discharge or a military spouse whose spouse received a dishonorable discharge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:707 (October 1988), amended LR 22:352 (May 1996), LR 27:199 (February 2001), LR 28:1974 (September 2002), LR 30:2311 (October 2004), LR 33:2193 (October 2007), LR 37:2393 (August 2011), repromulgated LR 37:2623 (September 2011), LR 39:1043 (April 2013).

§121. License Renewals

A. - F.3.

4. Licensees on inactive status or who are retired shall not supervise individuals or otherwise engage in the practice of speech-language pathology or audiology.

G. - J.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:707 (October 1988), amended LR 22:351 (May 1996), LR 27:198 (February 2001), LR 28:1972 (September 2002), LR 30:2314 (October 2004), LR 33:2195 (October 2007), LR 37:2395 (August 2011), LR 39:1043 (April 2013).

§123. Continuing Education Requirements

A. - I.4. ...

5. college courses in the area of licensure taken for credit or official audit (3 semester hours or 6 quarter hours=10 hours of continuing education);

6. ...

7. workshops and in-services that are university, school, clinic, hospital or state agency sponsored (maximum of five hours in a related area);

I.8. - K.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 22:351 (May 1996), amended LR 27:199 (February 2001), LR 28:1973 (September 2002), LR 30:2314 (October 2004), LR 33:2196 (October 2007), LR 37:2395 (August 2011), LR 39:1043 (April 2013).

§125. Supervision Requirements for Restricted License, Provisional Speech-Language Pathology License and Provisional Audiology License

A. - B. ...

C. An individual may not be supervised by a provisional licensee, restricted licensee, assistant licensee, or an individual on inactive status.

D. - N. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:707 (October 1988), amended LR 22:352 (May 1996), LR 27:199 (February 2001), LR 28:1974 (September 2002) LR 30:2315 (October 2004), LR 33:2196 (October 2007), LR 37:2396 (August 2011), LR 39:1043 (April 2013).

§130. Telepractice

A. Licensed audiologists and speech-language pathologists can provide telehealth services through telephonic, electronic, or other means including diagnosis, consultation, treatment, transfer of healthcare information and continuing education. Telepractice regardless of where the service is rendered or delivered constitutes the practice of speech-language pathology or audiology and shall require Louisiana licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 39:1044 (April 2013).

Chapter 7. Code of Ethics

§701. Preamble

A. - D. ...

E. Rules of Ethics for Audiology, Provisional Audiology, Speech-Language Pathology, Provisional Speech-Language Pathology, and Restricted Speech-Language Pathology Licensees

1. Principle of Ethics I. Licensees shall honor their responsibility to hold paramount the welfare of persons they serve and provide professional services with honesty and compassion and shall respect the dignity, worth, and rights of those served. The licensee shall take all reasonable precautions to avoid harm to the individual served professionally.

E.1.a. - F.4.j. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 17:370 (April 1991), amended LR 22:360 (May 1996), LR 30:2324 (October 2004), LR 33:2201 (October 2007), LR 37:2399 (August 2011), LR 39:1044 (April 2013).

Emily Efferson
Administrator

1304#009

RULE

Department of Health and Hospitals Board of Examiners of Nursing Facility Administrators

Exam Requirements and Complaints
(LAC 46:XLIX.303, 503, 505, 511, 701, 709,
713, 903, 905, 1101, 1105, 1107, 1201, and 1301)

Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. and through the authority granted in R.S. 37:2501 et seq., that the Louisiana Board of Examiners of Nursing Facility

Administrators has amended LAC 46:XLIX.303-1301 relative to making certain technical changes, to establish/amend a rewards and recognition policy, to clarify minimum total hours for an AIT internship, to include a confidentiality and attestation for tests, to require passing exams prior to waivers, to allow for extension of time for CBC with board approval, to require a national prep course prior to taking the NAB, to specify minimum requirements for CEUs, and to provide that anonymous written or oral complaints will not be accepted and shall require sworn complaints be filed on board forms.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLIX. Nursing Facility Administrators

Chapter 3. Board of Examiners

§303. General Powers

A. - C. ...

D. The board may establish or amend a rewards and recognition policy in accordance with civil service rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, repealed and promulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 20:790 (July 1994), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:591 (February 2011), LR 39:1044 (April 2013).

Chapter 5. Examinations

§503. Pre-Examination Requirements: Conditions Precedent

A. - A.1. ...

2. is a citizen of the United States of America, or that he has formally declared his intention of becoming a citizen of the United States;

3. has no convictions for a felony or crimes involving moral turpitude as provided in R.S. 14:81.2;

4. is physically and mentally suitable and fit to be licensed and to practice as a nursing home administrator; and

5. has successfully completed a bachelors degree from an accredited institute of higher learning.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2505.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Department of Health and Hospitals, Board of Examiners of Nursing Facility Administrators, LR 20:789 (July 1994), LR 33:2423 (November 2007), LR 37:592 (February 2011), LR 39:1044 (April 2013).

§505. Application for Examination

A. - A.1. ...

2. an applicant for examination who has been convicted of, plead guilty to, no contest to, or has a trial pending for a misdemeanor involving abuse, neglect, or misappropriation of property or any felony or crimes involving moral turpitude as provided in R.S. 14:81.2 by any court in this state, or by any court of the United States, or by

any court of any other state of the United States, shall not be admitted to, or be permitted to take the examination provided for herein, unless he shall request a formal hearing before the board and provide evidence establishing a full pardon or parole granted by an appropriate authority authorized to grant such;

A.3. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, repealed and promulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended LR 37:592 (February 2011), LR 39:1044 (April 2013).

§511. Examinations and Mandatory Test Preparatory Course

A. Every candidate for licensing as a nursing facility administrator shall pass the Louisiana state standards examination and the NAB national examination by scores established by the board.

B. The NAB nursing home administrators licensing exam and the Louisiana state licensure exam both contain confidential information. Since some of the material contained on these examinations is used in future administrations of the examinations. Therefore, applicants shall not comment to other applicants, potential applicants, or any other person regarding the contents of these examinations. Failure to observe the confidentiality of the NAB nursing home administrators licensing exam or the state licensure exam may result in disciplinary action by the board.

C.1. Each candidate shall be required to take a test preparatory course approved by LABENFA prior to taking the NAB nursing home administrators licensing exam.

2. Cost of the LABENFA test preparatory course shall be as provided in Chapter 12 of this Part.

3. Any candidate that does not successfully pass the NAB nursing home administrators licensing exam shall be required to retake an approved LABENFA test preparatory course prior to re-taking the NAB nursing home administrators licensing exam.

4. Failure to complete the licensure process within 24 months from the date of application will result in loss of all accomplishments and fees unless authorized by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504 and R.S. 37:2505.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Facility Administrators, April 1970, repealed and promulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 20:790 (July 1994), LR 39:1045 (April 2013).

Chapter 7. Administrator-in-Training (AIT)

§701. Program

A. An applicant must serve full-time (40 hours per week) as an administrator-in-training for a minimum of six, which shall include a minimum of 1040 training hours. The program may be completed or begun before or after taking examinations so long as it is carried out strictly according to Chapter 7. During this time the AIT must work under close, direct, personal, on-site supervision of a full-time preceptor who shall be administrator of record or licensed nursing

home administrator serving as assistant administrator in the facility in which the AIT undertakes training.

1. - 2. ...

B. Facility. The AIT receives all training in the nursing home designated in his initial report unless the board grants prior approval for a change. The facility must be certified and participating in Medicare and/or Medicaid and have no current deficiency that is a threat to the health and safety of residents at the time the AIT begins training.

C. - D. ...

Department	Weeks	Hours
Administration	9	360
Nursing	5	200
Dietary	4	160
Resident Activity	2	80
Social Work	2	80
Medical Records	2	80
Environmental Management	2	80
Total Hours Required (minimum)		1040
NOTE: A week is defined as seven days, Sunday through the following Saturday.		

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), amended LR 12:511 (August 1986), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 20:790 (July 1994) repromulgated LR 21:175 (February 1995), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:592 (February 2011), LR 39:1045 (April 2013).

§709. Exit Interview

A. Upon completion of the program and receipt of the certificate of completion the AIT undergoes an exit interview to ensure she/he is sufficiently knowledgeable to be licensed. The exit interview is conducted by the executive director, a board member, or other authorized person. The AIT will receive his license upon passage of the exit interview, completion of initial registration form, and payment of initial registration fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), amended LR 9:62 (February 1983), LR 10:499 (July 1984), LR 12:512 (August 1986), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:593 (February 2011), LR 39:1045 (April 2013).

§713. Waivers

A. - B.1.b. ...

2. Experience. Waiver may be granted for any portion of the AIT for experience in the healthcare field that meets or exceeds AIT requirements in their specialty and such areas as approved by the board. Request for waivers are to be submitted with the application and properly documented on forms supplied as follows.

a. Qualifications. Waivers are conducted only after the AIT has passed both the state and NAB tests. Applicants with a degree in health care administration that includes an internship may qualify for an AIT waiver. Additionally, an assistant administrator or a director of nurses may apply for a full or partial waiver, provided such applicant has been employed, full time for three years within the last five years in a Louisiana medicare/medicaid approved nursing home. Also, a previously licensed Louisiana administrator may request a full or partial AIT waiver provided their license has not lapsed for more than a three year period.

b. Examination. All applicants for a full waiver undergo an exit interview conducted by a board member or an authorized representative. Applicants for partial waiver may be required to undergo an exit interview in those areas for which waiver is requested.

c. Non-Participating Facility Experience. No full waiver will be granted for experience acquired in a facility that is not approved for and does not participate in Medicare and/or Medicaid. All applicants applying for waiver based on experience in a non-participating facility must undergo an exit interview.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), amended LR 9:62 (February 1983), LR 10:499 (July 1984), LR 12:512 (August 1986), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:593 (February 2011), repromulgated LR 37:887 (March 2011), amended LR 38:52 (January 2012), LR 39:1045 (April 2013).

Chapter 9. Continuing Education

§903. Requirements

A. Number of Hours. Each licensee must complete a minimum of 15 hours of approved continuing education, or the portion thereof as designated by the board during the 12 month period preceding the date of re-registration of licenses.

B. - C.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504 and R.S. 37:2506.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), amended LR 11:864 (September 1985), LR 13:240 (April 1987), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 19:1023 (August 1993), repromulgated LR 19:1322 (October 1993), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:593 (February 2011), LR 39:1046 (April 2013).

§905. Registration of Institutions as Providers of Continuing Education Courses

A. - B. ...

C. A fee, as provided for in Chapter 12 of this Part, shall be paid annually by providers who impose charges to course participants. Government agencies are exempt from the fee.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504 and R.S. 37:2506.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 19:1023 (August 1993), LR 20:788 (July 1994), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:594 (February 2011), LR 39:1046 (April 2013).

Chapter 11. Licenses

§1101. Initial License

A. ...

1. An applicant, upon completion of AIT training, shall submit their notarized certificate of completion within 30 days.

2. Upon receipt of notarized AIT training certificate of completion and notification of passing the state and national exams, an applicant shall schedule their exit interview within 30 days from such notification.

3. Upon successful completion of the exit interview, an applicant shall submit his initial registration form with all required fees within 30 days, unless otherwise authorized by the board.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504 and R.S. 37:2506.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, repealed and promulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 20:789 (July 1994), repromulgated LR 20:1110 (October 1994), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:594 (February 2011), LR 39:1046 (April 2013).

§1105. Refusal, Suspension and Revocation of License

A. - A.3.c. ...

d. Category Four. A fine of not less than \$50 nor more than \$100.

A.3.e. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504, R.S. 37:2509 and R.S. 37:2510.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), amended LR 9:461 (July 1983), LR 12:366 (June 1986), amended by Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 15:195 (March 1989), repealed and repromulgated LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:595 (February 2011), LR 39:1046 (April 2013).

§1107. Reciprocity

A. - A.4. ...

B. The basic minimum standards for endorsement of a license by reciprocity are that the applicant must meet licensing standards in effect in Louisiana at the time the applicant was licensed in the state from which he/she seeks reciprocity, but in no instance is applicant required to meet

more than Louisiana standards; or has been licensed for at least five years and has practiced as a licensed administrator for at least three years. In lieu of an approved AIT program, one year of full-time experience as a practicing administrator may be considered.

C. A temporary license for a period not to exceed three months may be issued to a fully qualified reciprocity applicant upon payment of a registration fee determined by the board. However, the board may grant an extension up to 90 days in order to receive and review criminal background checks.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504 and R.S. 37:2508.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 9:461 (July 1983), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 19:1024 (August 1993), amended LR 20:1002 (September 1994), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:595 (February 2011), LR 39:1046 (April 2013).

Chapter 12. Fees and Assessments

§1201. Fee Schedule

A. The board hereby establishes the following fees and costs to be imposed for the purpose of implementing and enforcing the provisions of this Part.

Administrator address labels/page	\$8
Annual Conditional Registration Fee	\$200
Annual Registration Fee	\$375
Application Packet	\$50
Certification of document as true copy	\$10
CNA / DSW Card	\$12
Continuing Education Provider (annually)	\$600
Delinquent fee	\$150
Directory of Administrators	\$15
Failure to maintain current information	\$75
Handling and mailing per page	\$2
Initial Registration Fee	\$350
Minimum Licensure Standards Book	\$15
NFA Application Fee	\$500
NFA Replacement Card (with photo)	\$17
NSF Fee	\$25
Photocopies of document/page	\$0.50
Reciprocity Fee (to another state)	\$50
Reciprocity Fee (to Louisiana)	\$125
Replace License Card	\$12
Replace License (original)	\$30
Replace Registration Certificate or 2nd copy	\$25
Request for CEU Approval (applicant)	\$25
Request for CEU Approval (vendor)	\$75
Seminars (per hour of instruction)	\$30
State Exam Fee	\$100

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Facility Administrators, LR 37:596 (February 2011), amended LR 39:1047 (April 2013).

Chapter 13. Complaints and Hearing Procedures

§1301. Registration of Complaints

A. Effective January 2013, anonymous written or oral complaints will not be accepted by the board.

B. Any person, public officer, association, or the board, may prefer charges against any licensee for due cause.

C. Such proceedings shall begin by the filing of sworn written charges with the board. Such charges shall be filed on forms provided by the board. Thereupon the chairman shall initiate an investigation of such charges, and, if indicated, shall designate three or more of its members thereof as a hearing committee or other qualified person as a hearing officer to hear the charges and report to the board thereon.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504, R.S. 37:2509 and R.S. 37:2510.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 9:461 (July 1983), amended LR 11:864 (September 1985), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 39:1047 (April 2013).

Mark A. Hebert
Executive Director

1304#016

RULE

**Department of Health and Hospitals
Board of Medical Examiners**

Physician Practice; Dispensation of Medications
(LAC 46:XLV.6506)

In accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority of the Louisiana Medical Practice Act, R.S. 37:1261-1292, the Louisiana State Board of Medical Examiners has amended its rules governing dispensation of medications, LAC 46:XLV.6506, to add Subsection D. The amendment is set forth below.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

**Part XLV. Medical Professions
Subpart 3. Practice**

**Chapter 65. Dispensation of Medications
Subchapter B. Prohibitions, Sanctions and Exceptions
§6506. Exceptions**

A. - C.2. ...

D. Notwithstanding §6505.E of this Subchapter, a registrant may dispense up to a single seven day supply of a non-narcotic, non-anorectic schedule V controlled substance for the purpose of assessing a therapeutic response when prescribed according to indications approved by the United States Food and Drug Administration and:

1. the medication is prepackaged by the original manufacturer;
2. the prepackaged medication is provided at no cost to a dispensing physician for dispensation to a patient at no cost to the patient; and
3. the dispensing physician submits all required information regarding each dispensation to the Louisiana Board of Pharmacy in accordance with the Prescription Monitoring Program Act, R.S. 40:1001 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292 and R.S. 37:1201.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 34:1626 (August 2008), repromulgated LR 34:1905 (September 2008), amended LR 39:1047 (April 2013).

Robert L. Marier, M.D.
Executive Director

1304#036

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Early and Periodic Screening—Diagnosis and Treatment
Dental Program—Reimbursement Rate Reduction
(LAC 50:XV.6905)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:XV.6905 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening, Diagnosis and Treatment

Chapter 69. Dental Services

§6905. Reimbursement

A. - H. ...

I. Effective for dates of service on or after July 1, 2012, the reimbursement fees for EPSDT dental services shall be reduced to the following percentages of the 2009 National Dental Advisory Service Comprehensive Fee Report 70th percentile, unless otherwise stated in this Chapter:

1. 65 percent for the following oral evaluation services:

a. periodic oral examination;
b. oral examination-patients under three years of age; and

c. comprehensive oral examination-new patients;

2. 62 percent for the following annual and periodic diagnostic and preventive services:

a. radiographs-periapical, first film;
b. radiographs-periapical, each additional film;
c. radiographs-panoramic film;
d. diagnostic casts;
e. prophylaxis-adult and child;
f. topical application of fluoride, adult and child (prophylaxis not included); and

g. topical fluoride varnish, therapeutic application for moderate to high caries risk patients (under six years of age);

3. 45 percent for the following diagnostic and adjunctive general services:

a. oral/facial image;
b. non-intravenous conscious sedation; and
c. hospital call; and

4. 56 percent for the remainder of the dental services.

J. Removable prosthodontics and orthodontic services are excluded from the July 1, 2012 rate reduction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:1138 (June 2007), amended LR 34:1032 (June 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1890 (September 2009), LR 36:2040 (September 2010), LR 37:1598 (June 2011), LR 39:1048 (April 2013).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Kathy H. Kliebert
Interim Secretary

1304#086

RULE

Department of Health and Hospitals Bureau of Health Services Financing and Office of Aging and Adult Services

Home and Community-Based Services Waivers
Community Choices Waiver
Reimbursement Methodology
(LAC 50:XXI.9501)

Editor's Note: This Rule is being repromulgated to correct a citation error. The original Rule can be viewed in the March 20, 2013 *Louisiana Register* on page 508.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services have amended LAC 50:XXI.9501 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services Waivers

Subpart 7. Community Choices Waiver

Chapter 95. Reimbursement

§9501. Reimbursement Methodology

A. Reimbursement for the following services shall be a prospective flat rate for each approved unit of service provided to the participant. One quarter hour (15 minutes) is the standard unit of service, which covers both the service provision and administrative costs for the following services:

1. - 1.a. ...

b. for dates of service on or after November 1, 2012, personal assistance services furnished to two participants shall be reimbursed at 82.79 percent of the full rate for each participant;

c. for dates of service on or after November 1, 2012, personal assistance services furnished to three participants shall be reimbursed at 72.4 percent of the full rate for each participant;

2. in-home caregiver temporary support service when provided by a personal care services or home health agency;
3. caregiver temporary support services when provided by an adult day health care center; and
4. adult day health care services.

B. - C.1.c. ...

D. The following services shall be reimbursed at an established monthly rate:

1. - 2. ...

3. monthly monitoring/maintenance for certain assistive devices/technology and medical supplies procedures.

E. - G. ...

H. Reimbursement shall not be made for community choices waiver services provided prior to the department's approval of the POC and release of prior authorization for the services.

I. - L.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3525 (December 2011), amended LR 39:508 (March 2013), repromulgated LR 39:1048 (April 2013).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Kathy H. Kliebert
Interim Secretary

1304#087

RULE

Department of Health and Hospitals Bureau of Health Services Financing and

Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
New Opportunities Waiver
Reimbursement Rate Reduction
(LAC 50:XXI.14301)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities have amended LAC 50:XXI.14301 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXI. Home and Community Based Services Waivers

Subpart 11. New Opportunities Waiver

Chapter 143. Reimbursement

§14301. Reimbursement Methodology

A. - J.1.e. ...

K. Effective for dates of service on or after July 1, 2012, the reimbursement rates for individualized and family support services—day provided to one person shall be reduced by 1.5 percent of the rates in effect on June 30, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1209 (June 2004), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 34:252 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:1851 (September 2009), LR 36:1247 (June 2010), LR 37:2158 (July 2011), LR 39:1049 (April 2013).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Kathy H. Kliebert
Interim Secretary

1304#088

RULE

Department of Health and Hospitals Bureau of Health Services Financing and

Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Residential Options Waiver
Reimbursement Rate Reduction (LAC 50:XXI.16901)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities have amended LAC 50:XXI.16901 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXI. Home and Community Based Services Waivers

Subpart 13. Residential Options Waiver

Chapter 169. Reimbursement

§16901. Reimbursement Methodology

A. - K.1.d. ...

L. Effective for dates of service on or after July 1, 2012, the reimbursement for residential options waiver services shall be reduced by 1.5 percent of the rates in effect on June 30, 2012.

1. The following services shall be excluded from this rate reduction:

- a. personal emergency response services;
- b. environmental accessibility adaption services;

- c. specialized medical equipment and supplies; and
- d. transitional services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2456 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:1049 (April 2013).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Kathy H. Kliebert
Interim Secretary

1304#089

RULE

Department of Health and Hospitals Bureau of Health Services Financing and

Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers Supports Waiver—Reimbursement Rate Reduction (LAC 50:XXI.6101)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities have amended LAC 50:XXI.6101 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community Based Services Waivers

Subpart 5. Supports Waiver

Chapter 61. Reimbursement Methodology

§6101. Reimbursement Methodology

A. - L.1. ...

M. Effective for dates of service on or after July 1, 2012, the reimbursement rates for supports waiver services shall be reduced by 1.5 percent of the rates on file as of June 30, 2012.

1. Personal emergency response system services shall be excluded from the rate reduction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1607 (September 2006), amended LR 34:662 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:2281 (October 2010), LR 37:2158 (July 2011), LR 39:1050 (April 2013).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of

Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Kathy H. Kliebert
Interim Secretary

1304#090

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Home Health Program—Durable Medical Equipment Reimbursement Rate Reduction (LAC 50:XIII.10301)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:XIII.10301 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XIII. Home Health Program

Subpart 3. Medical Equipment, Supplies and Appliances

Chapter 103. Reimbursement Methodology

§10301. General Provisions

A. - E.2. ...

F. Effective for dates of service on or after July 1, 2012, the reimbursement paid for medical equipment, supplies and appliances shall be reduced by 3.7 percent of the rates on file as of June 30, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1894 (September 2009), amended LR 36:1247 (June 2010), LR 36:2041 (September 2010), LR 39:1050 (April 2013).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Kathy H. Kliebert
Interim Secretary

1304#091

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Home Health Program Nursing and Home Health Aide Services Reimbursement Rate Reduction (LAC 50:XIII.701)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:XIII.701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XIII. Home Health

Subpart 1. Home Health Services

Chapter 7. Reimbursement Methodology

§701. Nursing and Home Health Aide Services

A. - C. ...

D. Effective for dates of service on or after July 1, 2012, the reimbursement rates for intermittent and extended nursing services and home health aide services shall be reduced by 3.7 percent of the rates in effect on June 30, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:654 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2281 (October 2010), amended LR 37:2159 (July 2011), LR 39:1051 (April 2013).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Kathy H. Kliebert
Interim Secretary

1304#092

RULE

**Department of Health and Hospitals
Bureau of Health Services Financing**

**Medicaid Provider Screening and Enrollment
(LAC 50:I.Chapter 15)**

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted LAC 50:I.Chapter 15 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2116. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part I. Administration

Subpart 1. General Provisions

Chapter 15. Provider Screening and Enrollment

§1501. General Provisions

A. Pursuant to the provisions of the Patient Protection and Affordable Care Act (PPACA), Public Law 111-148 and 42 CFR Part 455, Subpart E, the Medicaid Program adopts the following provider enrollment and screening requirements. The Centers for Medicare and Medicaid Services (CMS) has established guidelines for provider categorization based on an assessment of potential for fraud, waste, and abuse for each provider type. The Medicaid Program shall determine the risk level for providers and will adopt these federal requirements in addition to any existing requirements. Additional enrollment requirements may be adopted in the future.

B. In accordance with PPACA and federal regulations, the Medicaid Program shall screen all initial applications, including applications for a new practice location, and any applications received in response to a re-enrollment or revalidation, utilizing the following guidelines.

1. Provider types shall be categorized by the following risk levels.

a. High Categorical Risk—categories of service that pose a significant risk of fraud, waste, and abuse to the Medicaid Program.

b. Moderate Categorical Risk—categories of service that pose a moderate risk of fraud, waste, and abuse to the Medicaid Program.

c. Limited Categorical Risk—categories of service that pose a minor risk of fraud, waste, and abuse to the Medicaid Program.

C. Screening activities for the varying risk levels shall include the following mandates.

1. High risk level screening activities shall include:

a. fingerprinting and criminal background checks for all disclosed individuals;

b. unannounced site visits before and after enrollment; and

c. verification of provider-specific requirements including, but not limited to:

i. license verification;

ii. national provider identifier (NPI) check;

iii. Office of Inspector General (OIG) exclusion check;

iv. disclosure of ownership/controlling interest information; and

v. the Social Security Administration's death master file check.

2. Moderate risk level screening activities shall include:

a. unannounced site visits before and after enrollment; and

b. verification of provider-specific requirements including, but not limited to:

i. license verification;

ii. NPI check;

iii. OIG exclusion check;

iv. disclosure of ownership/controlling interest information; and

v. the Social Security Administration's death master file check.

3. Limited risk level screening activities shall include, but are not limited to:

a. verification of provider-specific requirements including:

i. license verification;

ii. NPI check;

iii. OIG exclusion check;

iv. disclosure of ownership/controlling interest information verification; and

v. the Social Security Administration's death master file check.

D. The Medicaid Program may rely on, but is not limited to, the results of provider screenings performed by:

1. Medicare contractors;

2. Medicaid agencies; or

3. Children's Health Insurance Programs (CHIP) of other states.

E. Updated Medicaid enrollment forms shall require additional information for all disclosed individuals.

F. Providers shall be required to revalidate their enrollments with the Medicaid Program at a minimum of five year intervals. A more frequent revalidation requirement, a minimum of three year intervals, shall apply to durable medical equipment (DME) providers and pharmacy providers with DME or home medical equipment (HME) specialty enrollments. All providers shall be required to revalidate their enrollment under PPACA and Medicaid criteria.

1. Existing providers shall be revalidated in phases, with completion scheduled for March 23, 2015.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:1051 (April 2013).

§1503. Temporary Moratoria

A. The secretary of the U.S. Department of Health and Human Services (HHS) will consult with the Department of Health and Hospitals (DHH) regarding the imposition of temporary moratoria on enrollment of new providers or provider types prior to imposition of the moratoria.

1. DHH shall impose temporary moratoria on enrollment of new providers or provider types identified by the HHS secretary as posing an increased risk to the Medicaid Program.

2. DHH shall not be required to impose such a moratorium if it is determined that imposition of a temporary moratorium would adversely affect recipient's access to medical assistance.

a. If making such a determination, DHH must notify the HHS secretary in writing.

B. DHH may impose temporary moratoria on enrollment of new providers, or impose numerical caps or other limits that the department identifies as having a significant potential for fraud, waste or abuse, and that the HHS secretary has identified as being at high risk.

1. Before implementing the moratoria, caps or other limits, DHH must determine that its action would not adversely impact beneficiaries' access to medical assistance.

2. DHH must notify the HHS secretary in writing in the event the department seeks to impose such moratoria, including all details of the moratoria, and obtain the secretary's concurrence with imposition of the moratoria.

C. The department must impose the moratorium for an initial period of six months, and if necessary, extend the moratorium in six month increments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:1052 (April 2013).

Kathy H. Kliebert
Interim Secretary

1304#093

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Personal Care Services—Long Term Cost Reporting Requirements (LAC 50:XV.12919)

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted LAC 50:XV.12919 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 9. Personal Care Services

Chapter 129. Long Term Care

§12919. Cost Reporting Requirements

A. Effective July 1, 2012, the department shall implement mandatory cost reporting requirements for providers of long-term personal care services. The cost reports will be used to verify expenditures and to support rate setting for the services rendered to Medicaid recipients.

B. Each LT-PCS provider shall complete the DHH approved cost report and submit the cost report(s) to the department no later than five months after the state fiscal year ends (June 30).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:1052 (April 2013).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Kathy H. Kliebert
Interim Secretary

1304#094

RULE

Department of Health and Hospitals Office of Public Health

Disease Reporting Requirements and Blood Bank Storage Temperature (LAC 51:II.105 and 113 and XIX.309)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the state health officer, acting through the Department of Health and Hospitals, Office of Public Health, pursuant to the authority in R.S. 40:4(A)(2), R.S. 40:4(A)(10), and R.S. 40:5(10), amends and revises Title 51 (Public Health—Sanitary Code), Part II (Disease Reporting Requirements) and Part XIX (Hospitals, Ambulatory Surgical Centers, Renal Dialysis Centers) by effecting substantive changes as outlined below.

Title 51

PUBLIC HEALTH—SANITARY CODE

Part II. The Control of Diseases

Chapter 1. Disease Reporting Requirements

**§105. Reportable Diseases and Conditions
[formerly paragraph 2:003]**

A. The following diseases or conditions are hereby declared reportable with reporting requirements by class.

1. Class A Diseases or Conditions which Shall Require Reporting within 24 Hours

a. Class A diseases or conditions include diseases or conditions of major public health concern because of the severity of the disease or condition and the potential for epidemic spread. Class A diseases or conditions shall be reported to the Office of Public Health by telephone (or in another electronic format acceptable to the Office of Public Health) immediately upon recognition that a case, a suspected case, or a positive laboratory result is known. In addition, all cases of rare or exotic communicable diseases, unexplained death, unusual cluster of disease and all outbreaks shall be reported. Any class A disease or condition, rare or exotic communicable disease, unexplained death, or unusual cluster of disease and any disease outbreak, shall be reported to the Office of Public Health as soon as possible but no later than 24 hours from recognition that a case, a suspected case, a positive laboratory result, an unexplained death, an unusual cluster of disease, or a disease outbreak is known. The following diseases or conditions shall be classified as class A for reporting requirements:

- i. Acute Flaccid Paralysis;
- ii. Anthrax;
- iii. Avian or novel strain Influenza A (Initial Detection);
- iv. Botulism;
- v. Brucellosis;
- vi. Cholera;
- vii. *Clostridium perfringens* food-borne infection;
- viii. Diphtheria;
- ix. Fish or shellfish poisoning (Domoic Acid poisoning, Neurotoxic shellfish poisoning, Ciguatera, Paralytic shellfish poisoning, scombroid) ;
- x. Food-borne Infection;
- xi. *Haemophilus influenzae* (invasive infection);
- xii. Influenza-associated mortality;
- xiii. Measles (rubeola imported or indigenous);
- xiv. *Neisseria meningitidis* (invasive infection);
- xv. Outbreaks of any infectious diseases;
- xvi. Pertussis;
- xvii. Plague (*Yersinia pestis*);
- xviii. Poliomyelitis (paralytic and non-paralytic);
- xix. Q Fever (*Coxiella burnetii*);
- xx. Rabies (animal and human);
- xxi. Ricin poisoning;
- xxii. Rubella (congenital syndrome);
- xxiii. Rubella (German measles);
- xxiv. Severe Acute Respiratory Syndrome-associated Coronavirus (SARS-CoV);
- xxv. *Staphylococcus aureus*, Vancomycin Intermediate or Resistant (VISA/VRSA);
- xxvi. Staphylococcal Enterotoxin B (SEB) Pulmonary poisoning;
- xxvii. Smallpox;

- xxviii. Tularemia (*Francisella tularensis*);
- xxix. Viral Hemorrhagic Fever; and
- xxx. Yellow Fever.

2. Class B Diseases or Conditions which Shall Require Reporting within One Business Day

a. Class B diseases or conditions include diseases or conditions of public health concern needing timely response because of potential for epidemic spread. The following Class B diseases or conditions shall be reported to the Office of Public Health by the end of the next business day after the existence of a case, a suspected case, or a positive laboratory result is known:

- i. Amoeba (free living) infection (including *Acanthamoeba*, *Naegleria*, *Balamuthia* and others);
- ii. Anaplasmosis;
- iii. Arthropod-Borne Neuroinvasive Disease and other infections (including West Nile, St. Louis, California, Eastern Equine, Western Equine and others);
- iv. Aseptic meningitis;
- v. Babesiosis;
- vi. Chagas disease;
- vii. Chancroid;
- viii. Dengue fever;
- ix. *Escherichia coli*, Shiga-toxin producing (STEC), including *E. coli* O157:H7;
- x. Granuloma inguinale;
- xi. Hantavirus (Infection or Pulmonary Syndrome);
- xii. Hemolytic-Uremic Syndrome;
- xiii. Hepatitis A (acute illness);
- xiv. Hepatitis B (acute illness and carriage in pregnancy);
- xv. Hepatitis B (perinatal infection);
- xvi. Hepatitis E;
- xvii. Herpes (neonatal);
- xviii. Human Immunodeficiency Virus [(HIV), infection in pregnancy]²;
- xix. Human Immunodeficiency Virus [(HIV), perinatal exposure]²;
- xx. Legionellosis;
- xxi. Malaria;
- xxii. Mumps;
- xxiii. Salmonellosis;
- xxiv. Shigellosis;
- xxv. Syphilis¹;
- xxvi. Tetanus;
- xxvii. Tuberculosis³ due to *Mycobacterium tuberculosis*, bovis or africanum; and
- xxviii. Typhoid Fever.

3. Class C Diseases or Conditions which Shall Require Reporting within Five Business Days

a. Class C diseases or conditions shall include diseases or conditions of significant public health concern. The following Class C diseases or conditions shall be reported to the Office of Public Health by the end of the workweek after the existence of a case, suspected case, or a positive laboratory result is known:

- i. Acquired Immune Deficiency Syndrome (AIDS);²
- ii. *Anaplasma phagocytophilum*
- iii. Blastomycosis;
- iv. Campylobacteriosis;

- v. Chlamydial infection¹;
- vi. Coccidioidomycosis;
- vii. Cryptococcosis;
- viii. Cryptosporidiosis;
- ix. Cyclosporiasis;
- x. Ehrlichiosis (human granulocytic, human monocytic, *Ehrlichia chaffeensis* and *ewingii*);
- xi. Enterococcus, Vancomycin Resistant [(VRE), invasive disease];
- xii. Giardia;
- xiii. Glanders;
- xiv. Gonorrhea¹ (Genital, oral, ophthalmic, pelvic inflammatory disease rectal);
- xv. Hansen Disease (leprosy);
- xvi. Hepatitis B (carriage, other than in pregnancy);
- xvii. Hepatitis C (acute illness);
- xviii. Hepatitis C (past or present infection);
- xix. Human Immunodeficiency Virus [(HIV) infection, other than as in Class B]²;
- xx. Human T Lymphocyte Virus (HTLV I and II) infection;
- xxi. Leptospirosis;
- xxii. Listeria;
- xxiii. Lyme Disease;
- xxiv. Lymphogranuloma venereum¹;
- xxv. Melioidosis (*Burkholderia pseudomallei*);
- xxvi. Meningitis eosinophilic;
- xxvii. Nipah virus infection;
- xxviii. Psittacosis;
- xxix. Spotted fevers [*Rickettsia* species including Rocky Mountain Spotted Fever (RMSF)];
- xxx. Staphylococcal Toxic Shock Syndrome;
- xxxi. *Staphylococcus aureus*, Methicillin/Oxacillin Resistant (MRSA), invasive infection);
- xxxii. Streptococcal disease, Group A (invasive disease);
- xxxiii. Streptococcal disease, Group B (invasive disease);
- xxxiv. Streptococcal Toxic Shock Syndrome;
- xxxv. *Streptococcus pneumoniae* invasive disease;
- xxxvi. Transmissible Spongiform Encephalopathies (Creutzfeldt-Jacob Disease and variants);
- xxxvii. Trichinosis;
- xxxviii. Varicella (chickenpox);
- xxxix. *Vibrio* infections (other than cholera); and
- xl. Yersiniosis.

4. Class D Special Reportable Diseases or Conditions Shall Require Reporting within Five Business Days

a. Class D diseases or conditions shall include diseases or conditions of significant public health concern. The following Class D diseases or conditions shall be reported to the Office of Public Health by the end of the workweek after the existence of a case, suspected case, or a positive laboratory result is known:

- i. cancer;
- ii. monoxide exposure and / or poisoning;
- iii. complications of abortion;
- iv. congenital hypothyroidism⁴;
- v. galactosemia;
- vi. heavy metal (arsenic, cadmium, mercury) exposure and/or poisoning (all ages)⁵;
- vii. hemophilia;

- viii. lead exposure and/or poisoning (children); (adults);
- ix. pesticide-related illness or injury (all ages);
- x. phenylketonuria⁴;
- xi. Reye's Syndrome;
- xii. severe traumatic head injury;
- xiii. severe under nutrition (severe anemia, failure to thrive);
- xiv. sickle cell disease (newborns);
- xv. spinal cord injury; and
- xvi. sudden infant death syndrome (SIDS).

5. Class E Syndromic Surveillance: Reportable Conditions seen at Emergency Departments of Acute Care Hospitals which Shall Require Reporting Electronically within One Business Day of the Visit

a. Class E shall include all conditions seen at Emergency Departments of Acute Care Hospitals. The text content of the chief complaint for the visit or an international classification of disease code shall be reported to the Office of Public Health within one business day of the visit by electronic means as specified by the Office of Public Health beginning on [the effective date of this rule].

B. Case reports not requiring special reporting instructions (see below) can be reported by mail or facsimile [504-568-8290 (fax)] on confidential disease report forms, or by phone (call (800) 256-2748 for forms and instructions) or in an electronic format acceptable to the Office of Public Health.

1. ¹Report on STD-43 form. Report cases of syphilis with active lesions by telephone, within one business day, to (504) 568-7474.

2. ²Report to the Louisiana HIV/AIDS Program: Visit www.hiv.dhh.louisiana.gov or call (504) 568-7474 for regional contact information.

3. ³Report on CDC72.5 (f.5.2431) card.

4. ⁴Report to the Louisiana Genetic Diseases Program and Louisiana Childhood Lead Poisoning Prevention Programs: www.genetics.dhh.louisiana.gov or facsimile [(504) 568-8253 (fax)] or call (504) 568-8254 or (800) 242-3112.

5. ⁵Report to the Section of Environmental Epidemiology and Toxicology: www.seet.dhh.louisiana.gov or call (504) 568-8159 or (888) 293-7020.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(2) and R.S. 40:5(10).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1212 (June 2002), amended LR 32:1050 (June 2006), LR 34:2173 (October 2008), repromulgated LR 34:2582 (December 2008), LR 36:1014 (May 2010), repromulgated LR 36:1253 (June 2010), LR 39:1053 (April 2013).

§113. Laboratory Reporting Requirements [formerly paragraph 2:008]

A. The director of every laboratory whether public, private, hospital or other, within or out of the state shall report to the state health officer the results of all tests that are in any way clinically relevant, suggestive or indicative of an individual having active disease, past or present exposure to, past or present contact with and/or past or present association with any of the disease/conditions listed in LAC 51 (Public Health-Sanitary Code), Part II, Chapter 1, §105. The results of the tests to be reported to the state health officer do not have to be conducted for diagnostic reasons,

nor do the results have to be diagnostic or confirmatory. The report should be received in a timely manner consistent with the requirements of the diseases/conditions class described in §105 and shall state the name, date of birth, sex, race, usual residence, specimen identification code/ID and test results of the tested individual as well as the name of the physician or person submitting the specimen. Contact information for the laboratory performing the test(s) must be provided. Laboratories shall not defer their public health reporting responsibilities to any other authorities within the institutions they serve. In addition, laboratories performing tests on specimens received from other laboratories shall report to the state health officer all results as prescribed above plus the contact information for the facility/laboratory where the specimen originated. Moreover, no considerations, evaluations or concerns, regarding any test technology or test result by institutions and/or organizations whether federal, state or otherwise (e.g., FDA, CMS-CLIA, etc.) which may be overseeing, approving, evaluating or licensing laboratory testing, shall represent an *a priori* rationale for withholding laboratory reports from the state health officer.

B. A reference culture is required to be sent to the Office of Public Health laboratory for the following microorganisms within five working days of the final identification of the microorganism:

- i. *Bacillus anthracis* (confirmed or suspected);
- ii. *Bordetella pertussis*;
- iii. *Burkholderia mallei*;
- iv. *Campylobacter* spp.;
- v. *Corynebacterium diphtheria*;
- vi. *E.Coli* O157H7 or *E.coli* Shiga Toxin producing ;
- vii. *Francisella* species;
- viii. *Listeria* spp.;
- ix. *Mycobacterium tuberculosis*, *bovis* or *africanum*;
- x. *Plesiomonas* spp.;
- xi. *Salmonella*;
- xii. *Shigella*;
- xiii. *Vibrio* spp.;
- xiv. *Yersinia enterocolitica*; and
- xv. *Yersinia pestis*.

C. A reference culture is required to be sent to the Office of Public Health Laboratory for the following microorganisms if the original culture was from a sterile site (e.g., blood, spinal fluid, other internal fluid, tissue, etc.). Such reference culture shall be sent to the Office of Public Health Laboratory within five working days of the final identification of the microorganism:

- i. *Haemophilus influenzae* type b or untyped;
- ii. *Neisseria meningitidis*; and
- iii. *Streptococcus pneumoniae*.

D. Laboratory reports shall not be construed by the Office of Public Health as diagnosis. In the case of private patients, follow-up of laboratory reports shall be through the physician(s) submitting the specimen(s).

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(2) and R.S. 40:5(10).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1214 (June 2002), amended LR 32:1052 (June 2006), LR 39:1054 (April 2013).

**Part XIX. Hospitals, Ambulatory Surgical Centers,
Renal Dialysis Centers**
Chapter 3. Operations and Maintenance
§309. Laboratory

[formerly paragraph 19:024]

A. Microbiological cultures shall be disposed of in an incinerator approved by the Air Permits Division of the DEQ or sterilized prior to disposal. Smoking and eating are not allowed in laboratory areas. Laboratories, especially horizontal work surfaces, shall be cleaned and disinfected at the end of each work day.

B. ...

C. [Formerly paragraph 19:026] Blood bank refrigerators shall be kept clean and maintained at a temperature of 1°C to 6°C (33.8°F to 42.8°F), provided with an alarm and used for flood storage only. Time and temperature charts shall be maintained continuously and monitored and recorded daily. These records shall be maintained for at least a year. Alarm devices for refrigerators shall be provided.

AUTHORITY NOTE: Promulgated in accordance with the provisions or R.S. 40:4(A)(10) and R.S. 40:5(2)(3)(5)(15)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1395 (June 2002), amended LR 39:1055 (April 2013).

Kathy H. Kliebert
Interim Secretary

1304#048

RULE

**Department of State
Elections Division**

**Emergency Election Day Paper Ballot Procedures
(LAC 31:I.Chapter 11)**

Pursuant to the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.), and under the authority of R.S. 18:1352, R.S. 18:1353 and R.S. 36:742, the secretary of state has adopted LAC 31:I.Chapter 11 to establish guidelines for paper ballot procedures to be used on election day in the event that the secretary of state or his designee declares an emergency. Prior to the 2010 census, all precincts in Louisiana had a minimum of two voting machines in each precinct. If one voting machine became inoperable, voters were still capable of voting on the other voting machine in the precinct. As a result of reapportionment, Louisiana now has many split precincts where only one voting machine is available for drayage and placement in the polling place for election day. Louisiana continues to maintain a five percent backup for election day failures and has the authorization to provide for the use of paper ballots on an emergency basis pursuant to R.S. 18:1352.

**Title 31
ELECTIONS**

Part I. Election Process

**Chapter 11. Emergency Election Day Paper Ballot
Voting Procedures**

§1101. Emergency Declaration

A. The Department of State is establishing emergency election day paper ballot voting procedures to be followed if a precinct does not have a voting machine that is operable

and the precinct is not located in a consolidated precinct which has the ballot for which the voters are eligible to vote on a voting machine and the secretary of state or his designee declares an emergency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:1352, R.S. 18:1353, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:1055 (April 2013).

§1103. Preparation and Supplies for Implementation of Emergency Election Day Paper Ballot Voting Procedures

A. Emergency Declaration—Preparation Prior To Election Day

1. The secretary of state or his designee shall review all voting machine allocation reports and provide supplies for implementation of the emergency election day paper ballot voting procedures for any precinct which has only one voting machine allocated for the election and is not located in a consolidated polling place which has the ballot for which the voters are eligible to vote on a voting machine. Supplies shall be provided in the back of the voting machine for immediate implementation upon a written declared emergency.

2. The clerk of court shall provide training to the commissioners for each one voting machine precinct on the implementation of the emergency election day paper ballot voting procedures as provided for herein.

3. The clerk of court shall inform the parish board of election supervisors or the absentee commissioners appointed to count the mail and early voting ballots of the possibility of having to implement the emergency election day paper ballot voting procedures due to the one machine precinct(s) in the parish.

B. Emergency Declaration—Supplies and Implementation Procedures

1. The commissioner-in-charge shall follow the directions in his parish for notifying the clerk of court and the Department of State when a precinct does not have a voting machine that is operable. The clerk of court, registrar of voters, and the secretary of state, or his designee, shall consult on the matter before an emergency is declared.

2. If the secretary of state, or his designee, declares an emergency, the secretary, or his designee, shall notify the clerk of court in writing, who shall notify the commissioners to implement the emergency election day paper ballot voting procedures provided for herein. The clerk of court shall also notify either the parish board of election supervisors or the appointed absentee commissioners of the declared emergency, so that they will be available to count the paper ballots on election night.

3. The secretary of state will provide all ballots and supplies to be used for the emergency election day paper ballot voting procedures. Supplies shall include: paper ballots identified by the corresponding button number of the machine lockout for the precinct and secrecy envelopes; a notice to the voters to be posted; instructions for the commissioners; a paper ballot audit form (in duplicate) to be used by the commissioners; a large return envelope labeled election day voted paper ballots; and any other supplies as determined necessary by the secretary or his designee.

4. The commissioner-in-charge shall post a notice at the entrance to the polling place notifying the voters that

they will be allowed to vote on paper ballots. The commissioner-in-charge shall remove the notice when the precinct has a voting machine that is operable and voting resumes on the voting machine.

5. The commissioners shall use the instructions provided to follow the proper procedures in implementing the emergency election day paper ballot voting procedures.

6. The commissioner-in-charge shall complete the relevant parts of the paper ballot audit form prior to distribution of any paper ballot, such as the parish/ward/precinct information, time of implementation of procedures, lockout button number on ballot envelope, and total number of ballots per lockout button received in the lead machine. The commissioner-in-charge shall use this form to account for the number of voted paper ballots sealed in secrecy envelopes per button number, the number of spoiled ballots sealed in secrecy envelopes per button number, and the number of unused ballots per button number. This information will provide an accurate accounting of the paper ballots supplied to the precinct per button number. At the end of the election day, the original paper ballot audit form shall be placed in the large return envelope labeled election day voted paper ballots for delivery to the clerk of court and a duplicate copy shall be posted at the precinct.

7. Paper ballots shall only be used during the time when the precinct does not have a voting machine that is operable and the secretary of state or his designee has declared an emergency in writing for implementation of the emergency election day paper ballot voting procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:551, R.S. 18:1352, R.S. 18:1353, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:1056 (April 2013).

§1105. Procedures for Voting and Termination of Voting for Paper Ballots

A. Allowing the Voters to Vote Paper Ballots

1. The commissioner shall continue to follow the normal procedures of verifying the voter and having the voter sign the precinct register as provided in the "Election Day Procedures" provided in Part 3 of the *Informational Pamphlet for Election Day Voting*.

2. Additionally, the commissioner shall initial the precinct register opposite the voter's signature or mark and write "Paper Ballot" in the "Lockout Districts" column on the line in the precinct register where the voter is listed.

3. After the commissioner initials the precinct register and writes "Paper Ballot" in the precinct register, the commissioner shall:

a. remove a ballot and secrecy envelope from the large ballot envelope labeled with the button number for the voter that is listed in the precinct register and account for the distribution of that specific ballot number on the paper ballot audit form. (Hash marks or similar counting marks may be used and then totaled at the end of voting to report a final total for each column on the paper ballot audit form.);

b. give the voter the ballot, the secrecy envelope and a pencil or pen;

c. instruct the voter to read and follow the instructions at the top of the ballot to mark the ballot according to those instructions and to seal the ballot in the secrecy envelope after he has completed voting;

d. the commissioner shall allow the voter to go to an area inside the polling place where he can mark his ballot in private and seal his voted ballot in the secrecy envelope; and

e. instruct the voter to return the sealed voted ballot in the secrecy envelope to the commissioner.

4. If the voter spoils his ballot and requests a new ballot, the commissioner shall:

a. instruct the voter to seal his spoiled ballot in the secrecy envelope before collecting the spoiled ballot;

b. write "Spoiled" across the ballot envelope and initial;

c. give the voter a new ballot; and

d. account for the distribution of the new ballot and the spoiled ballot on the paper ballot audit form and place the spoiled ballot envelope in the large return envelope labeled election day voted paper ballots.

5. Upon receipt of the voted ballot in the secrecy envelope from the voter, the commissioner shall account for the voted ballot on the paper ballot audit form and place the secrecy envelope in the large return envelope labeled election day voted paper ballots. The secrecy envelopes with the voted paper ballots shall be retained in the election day voted paper ballots envelope.

B. Termination of Voting Paper Ballots

1. Paper ballots shall only be used during the time when the precinct does not have a voting machine that is operable and the secretary of state, or his designee, has declared an emergency in writing for implementation of the emergency election day paper ballot voting procedures.

2. The commissioner-in-charge shall notify the clerk of court when the voting of paper ballots is terminated due to an operable voting machine and shall indicate the time on the paper ballot audit form. The clerk of court shall then notify the secretary of state, or his designee.

C. Closing the Polling Place

1. After the closing of the polling place, the commissioners shall follow the instructions to complete the paper ballot audit form and certify to its accuracy and place the original paper ballot audit form, all sealed secrecy envelopes containing voted ballots, all spoiled ballot envelopes, and all unused paper ballots and secrecy envelopes in the large return envelope labeled election day voted paper ballots.

2. The commissioner-in-charge shall post a duplicate copy of the paper ballot audit form next to the posted voting machine results tape.

3. The commissioner-in-charge shall place the large return envelope labeled election day voted paper ballots in the clear plastic zipper bag along with the election results cartridges and deliver the bag to the clerk of court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:49.1, R.S. 18:564, R.S. 18:565, R.S. 18:1352, R.S. 18:1353, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:1056 (April 2013).

§1107. Delivery of "Election Day Voted Paper Ballots" Envelope and Tabulation and Counting of Paper Ballots

A. Election Day Voted Paper Ballots Envelope

1. Upon receipt of the "election day voted paper ballots" envelope on election night, the clerk of court or his

designee shall deliver the envelope to the parish board of election supervisors or absentee commissioners for tabulation of the election day voted paper ballots.

B. Counting and Tabulating the Votes

1. The paper ballots cast at the polling place shall be counted by the parish board of election supervisors or the absentee commissioners on election night according to the procedures for counting absentee by mail ballots in R.S. 18:1313, R.S. 18:1315, R.S. 18:1316, and the specific procedures provided for herein.

2. A member of the parish board or an absentee commissioner shall remove the paper ballots audit form, the sealed secrecy envelopes containing the voted ballots, the spoiled ballot envelopes, and the unused paper ballots from the election day voted paper ballots envelope and check to confirm that the paper ballots audit form is correct and matches what is delivered in the election day voted paper ballots envelope. If there are any discrepancies, the board or absentee commissioners shall make a notation of the discrepancy on the original paper ballots audit form and certify by their signature to the accuracy of their notation.

3. Each voted ballot shall be removed from the secrecy envelope and a member of the parish board or an absentee commissioner shall write "ED" for election day and his initials in the space on the ballot directly below the secretary of state's signature so as not to mark on the dark black timing marks on the sides of the ballots and to distinguish the election day paper ballots from the absentee by mail paper ballots.

4. The election day paper ballots shall be segregated from the absentee by mail paper ballots and shall be kept segregated by precinct to be counted and reported by precinct.

5. The parish board of election supervisors or the absentee commissioners may elect to count the election day paper ballots manually or they may use the scanning equipment. The election day paper ballots shall be counted separately from the absentee by mail paper ballots and shall be counted and reported by precinct. The secretary of state shall provide written instructions to assist with the counting of paper ballots by precinct.

6. Upon completion of the counting of the election day paper ballots, a member of the parish board of election supervisors or absentee commissioner shall enter the vote totals from the election day paper ballots for each precinct on a worksheet which shall be signed by the board or absentee commissioners and delivered to the clerk of court for entering of the results.

7. The clerk of court or his designee on election night shall add the vote totals for the election day paper ballots from the worksheet to the vote totals for each precinct in the Department of State's Elections and Registration Information Network (ERIN). The secretary of state shall provide written instructions to assist with the entering of these vote totals.

8. Upon completion of the counting of the election day paper ballots, the voted ballots and secrecy envelopes, the original paper ballots audit form, the spoiled ballot envelopes, and all unused ballots and secrecy envelopes shall be returned to the election day voted ballots envelope and the envelope shall be retained by the registrar of voters in accordance with the procedures for retention of absentee by mail ballots in R.S. 18:1312.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:1312, R.S. 18:1313, R.S. 18:1315, R.S. 18:1316, R.S. 18:1352, R.S. 18:1353, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:1057 (April 2013).

Tom Schedler
Secretary of State

1304#035

RULE

Department of Transportation and Development Office of Management and Finance

Geospatial Database (LAC 70:XXIX.Chapter 1)

In accordance with the applicable provisions of the Administrative Procedures Act, R.S. 49:950 et seq., notice is hereby given that the Department of Transportation and Development, Office of Management and Finance is promulgating a Rule entitled “Geospatial Database Rules and Standards” in accordance with R.S. 48:36.

Title 70

TRANSPORTATION

Part XXIX. Information Technology

Chapter 1. Geospatial Database

§101. Purpose

A. The purpose of the Geospatial Database is to provide standards to facilitate and integrate the collection of geospatial data by state, local, and federal agencies, to be maintained by the department in the statewide geospatial database of Louisiana. To establish the geographic features that create a common base map for geospatial data analysis that support official state business and to be used by state government when representing or analyzing its business data using geographic information systems.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:36.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Management and Finance, LR 39:1058 (April 2013).

§103. Definitions

Base Map—a collection of one or more geospatial data layers that form the background of a cartographic presentation or form the basis for a geospatial data analysis.

Business Data—data (geospatial or otherwise) collected, purchased, developed, or maintained by an organization for the purposes of performing its work or accomplishing its mission(s).

Cartographic Presentation—the process of depicting or rendering geospatial data. This may include the production of paper maps, digital maps, websites, or other means of visualizing geospatial data.

Data Layer—a spatially integrated, areally distributed set of spatial data, usually representing one theme (water, transportation, etc.) or having a common set of attributes among spatial objects.

Department—the Louisiana Department of Transportation and Development.

Geographic Information System (GIS)—an integrated collection of computer software and data used to view and manage information about geographic places, analyze spatial relationships, and model spatial processes. A GIS provides a

framework for collecting and organizing spatial data and related information so that it can be analyzed and displayed.

Geospatial—refers to the identification of the geographic location and characteristics of a feature on the earth. This information may be derived from, among other things, remote sensing, mapping, and surveying technologies. This also refers to approaches such as GIS for manipulating geographic data.

Geospatial Database—digital database containing information that identifies and incorporates the geographic location and characteristics of features on the earth and the metadata that describes them. This information may be derived from various sources, including GIS, GPS, remote sensing, mapping, and surveying technologies.

Mapping—the process, methods, and techniques of creating digital geospatial data from source material. The source may be derived from surveying, aerial photography, remote sensing data, or global positioning systems (GPS).

Metadata—data describing the content, quality, condition, and other characteristics of a dataset. Various metadata standards exist for different types of data. The geospatial metadata standard shall be as specified by the Federal Geographic Data Committee (FGDC) and posted on their website (<http://www.fgdc.gov/metadata>).

Raster Data—the representation of geospatial objects as collections of elements represented as rows and columns of data spaced apart from each other, usually on an equal linear interval in the x and y directions. Raster data can only represent data as accurately as the x and y dimensions of each cell will support.

Statewide Geodatabase of Louisiana—a digital database that contains the official geospatial data of Louisiana. These data represent statewide coverage of the topographic map features of Louisiana and are intended to provide consistent geographic data for use in geospatial analysis, cartographic presentation, and mapping for the state.

Vector Data—the representation of geospatial objects as sets of points, lines, or polygons. Lines can accurately represent linear features or edges of polygon features to the level of accuracy that is supported by the scale of the source data and the data collection technology.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:36.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Management and Finance, LR 39:1058 (April 2013).

§105. Department Responsibilities

A. The department shall create, maintain, and manage a geospatial database which will include data layers consisting of, but not limited to:

1. elevation and bathymetry;
2. transportation;
3. hydrography (water features);
4. boundaries;
5. land cover (vegetation);
6. land use;
7. structures (buildings and other infrastructure);
8. public land survey system (PLSS); and
9. geographic names.

B. The department shall manage the Geospatial Database of Louisiana.

C. The department shall establish standard formats, metadata, and other requirements for the database.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:36.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Management and Finance, LR 39:1058 (April 2013).

§107. Data Layer Descriptions and Features

A. Elevation and Bathymetry

1. General Description

a. Elevation is the altitude, with reference to mean sea level (MSL) of the land surface. Bathymetry is the depth to bottom of a waterbody, with respect to MSL.

2. Feature Standards

a. The North American Vertical Datum of 1988 (NAVD1988) shall be the official datum for representing elevation and bathymetry. This will remain the standard until replaced by the by the National Oceanic and Atmospheric Administration-National Geodetic Survey (NOAA-NGS).

b. Standards for elevation data will be as specified by The National Map National Elevation Dataset Program of the U.S. Geological Survey, as published on their website (<http://ned.usgs.gov>).

c. Digital elevation models (DEM) represent elevation as a raster (rows and columns) of elevations at a specified interval. The standards for creating these raster datasets are published by the USGS National Elevation Program (<http://nationalmap.gov/standards/demstds.html>).

d. Hypsography (elevation represented as contours) shall be derived from elevation data meeting the standards specified above and produced using the standards for topographic mapping established by the U.S. Geological Survey (<http://nationalmap.gov/standards/qmapstds.html>).

e. Bathymetry, whether represented as a raster, point locations, or contours, must conform to the standards developed by the NOAA-NGS and published in their hydrographic surveys specifications and deliverables document (<http://www.nauticalcharts.noaa.gov/hsd/specs/specs.htm>).

B. Transportation

1. General Description

a. Transportation refers to the features that represent roads, railroads, pipelines, and other means of conveyance of persons or commodities, whether by vehicle or other means.

2. Feature Standards

a. The transportation layer shall follow the standards of the Louisiana Department of Transportation and Development, as modified from the U.S. Bureau of the Census, TIGER data specification (http://www.fgdc.gov/standards/projects/FGDC-standards-projects/framework-data-standard/GI_Framework_Data_Standard_Part7_Transportation_Base.pdf).

C. Hydrography

1. General Description

a. Linear and aerial surface water features, including:

- i. streams;
- ii. rivers;
- iii. bayous;
- iv. lakes;
- v. ponds; and
- vi. all areal water bodies.

2. Feature Standards

a. The standard for water features shall be the national hydrography dataset (NHD). This is the surface water component of the national map designed to be used for mapping and in the analysis of surface-water systems by the federal government. The standards are maintained by the USGS NHD Program (<http://nhd.usgs.gov>).

D. Boundaries

1. General Description

a. Boundaries consist of features such as legal and administrative boundaries (parishes, cities, etc.). These represent the delineation of official boundaries, but do not necessarily constitute the legal, surveyed boundary of an entity.

2. Feature Standards

a. Feature standards will follow those established by the USGS The National Map Program (<http://nationalmap.gov/standards/qmapstds.html>). All boundary changes and updates will be coordinates with the U.S. Census Boundary and Annexation Survey.

E. Land Cover and Land Use

1. General Description

a. Land cover constitutes the natural vegetative cover on the earth's surface (forest, water, open space, grassland, etc.). Land use is the manmade designations for an area. These include such features as urban or urbanized areas.

2. Feature Standards

a. Shall follow those established by the USGS The National Map Program (<http://nationalmap.gov/standards/qmapstds.html>).

F. Structures

2. General Description

a. Structures consist of features such as significant buildings, critical infrastructure, and other manmade structures.

2. Feature Standards

a. Shall follow those established by the USGS The National Map Program (<http://nationalmap.gov/standards/qmapstds.html>).

G. Public Land Survey System (PLSS)

1. General Description

a. PLSS is comprised of the surveyed townships, sections, and section corners established by the federal Land Ordinance of 1785, which provided for the systematic survey and monumentation of public domain lands, and the Northwest Ordinance of 1787. Features in this layer represent the survey results that conform to the standards set forth in The Manual of Instructions for the Survey of the Public Lands of The United States (1973), available from the U.S. Department of the Interior, Bureau of Land Management (<http://www.blm.gov/cadastral/Manual/73man/id1.htm>).

2. Feature Standards

a. Shall follow those established by the U.S. Department of the Interior, Bureau of Land Management http://www.geocommunicator.gov/GeoComm/lis_home/home/index.htm).

H. Geographic Names

1. General Description

a. The names of features on official maps and in geospatial databases with the purpose to maintain uniform

feature name usage throughout state and local government and to provide standard names to the public.

2. Feature Standards

a. Shall be established using the Geographic Names Information System (GNIS), the federal standard for geographic nomenclature. The USGS developed the GNIS for the U.S. Board on Geographic Names (<http://geonames.usgs.gov>).

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:36.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Management and Finance, LR 39:1059 (April 2013).

§109. Database

A. The database shall serve as:

1. a repository for the data layers contained in §105 and as described in §107;

2. a standard source for authoritative geospatial information for carrying out official business by all state agencies; and

3. the standard source for base map geospatial information of the common operational picture (COP) for all state agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:36.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Management and Finance, LR 39:1060 (April 2013).

§111. Liability Disclaimer

A. The department shall not be liable to any person, entity or third party as the result of the use of information by any person, entity or third party of the information and data contained in the Geospatial Database of Louisiana; nor does the department warrant or guarantee the accuracy of any of the information and data contained in the Geospatial Database of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:36.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Management and Finance, LR 39:1060 (April 2013).

§113. Geographic Names

A. The department shall act as the authority for all geographic names.

B. Geographic names shall be consistent with the standards established by the Geographic Names Information System (GNIS), established by the U.S. Board of Geographic Names (<http://geonames.usgs.gov>).

C. The department, through its IT GIS manager, will work with state agencies, political subdivisions, other governmental entities, and local authoritative entities within the state to establish a uniform use of geographic names.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:36.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Management and Finance, LR 39:1060 (April 2013).

§115. Availability

A. The department will make available its geospatial information system (GIS) services and data to all state agencies, the federal government, political subdivisions of

the state, and private persons. As each data layer is developed it will be available on the Department of Transportation and Development website, <http://gis.dotd.la.gov>, at no cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:36.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Management and Finance, LR 39:1060 (April 2013).

Sherri H. LeBas, P.E.
Secretary

1304#021

RULE

Department of Transportation and Development Professional Engineering and Land Surveying Board

Naval Architecture/Marine Engineering and Flood
Protection Levees (LAC 46:LXI.903, 1901, and 2909)

Under the authority of the Louisiana professional engineering and land surveying licensure law, R.S. 37:681 et seq., and in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Professional Engineering and Land Surveying Board has amended its rules contained in LAC 46:LXI.Chapters 9, 19, and 29.

This is a technical revision of existing rules under which LAPELS operates. These changes incorporate the new alternatives for licensure of naval architects/marine engineers and provide clarification that route surveys for flood protection levees are excluded from the board's standards of practice for boundary surveys.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXI. Professional Engineers and Land Surveyors Chapter 9. Requirements for Certification and Licensure of Individuals and Temporary Permit to Practice Engineering

§903. Professional Engineer Licensure

A. The requirements for licensure as a professional engineer under the alternatives provided in the licensure law are as follows:

1. ...

2. the applicant for licensure as a professional engineer shall be an individual who holds a valid license to engage in the practice of engineering issued to him/her by proper authority of a state, territory, or possession of the United States, or the District of Columbia, based on requirements that do not conflict with the provisions of the licensure law, and which were of a standard not lower than that specified in the applicable licensure law in effect in Louisiana at the time such license was issued, who is of good character and reputation, who has submitted an application for licensure in accordance with the requirements of R.S. 37:694, and if the state, territory, or possession, or the District of Columbia, in which he/she is licensed will

accept the licenses issued by the board on a comity basis, and who was duly licensed as a professional engineer by the board; or

3. effective until December 31, 2015, the applicant for licensure as a professional engineer shall be an individual who holds a bachelor of science degree in naval architecture and marine engineering, or in an equivalent board-approved curriculum, from an accredited engineering curriculum of four years or more approved by the board as being of satisfactory standing, who is of good character and reputation, who has a verifiable record of 20 years or more of progressive engineering experience in naval architecture and marine engineering on engineering projects of a level and scope satisfactory to the board, who was recommended for licensure by five personal references, three of whom are professional engineers who have personal knowledge of the applicant's engineering experience and character and ability, who has submitted an application for licensure in accordance with the requirements of R.S. 37:694, and who was duly licensed as a professional engineer by the board; or

4. effective until December 31, 2015, the applicant for licensure as a professional engineer shall be an individual who holds a master of science degree in naval architecture and marine engineering, or in an equivalent board-approved curriculum, or two bachelor of science degrees in related engineering curricula, from an accredited engineering curriculum approved by the board as being of satisfactory standing, who is of good character and reputation, who has a verifiable record of 15 years or more of progressive engineering experience in naval architecture and marine engineering on engineering projects of a level and scope satisfactory to the board, who was recommended for licensure by five personal references, three of whom are professional engineers who have personal knowledge of the applicant's engineering experience and character and ability, who has submitted an application for licensure in accordance with the requirements of R.S. 37:694, and who was duly licensed as a professional engineer by the board; or

5. effective until December 31, 2015, the applicant for licensure as a professional engineer shall be an individual who holds a doctor of philosophy degree in naval architecture and marine engineering, or in an equivalent board-approved curriculum, from an accredited engineering curriculum approved by the board as being of satisfactory standing, who is of good character and reputation, who has a verifiable record of 10 years or more of progressive engineering experience in naval architecture and marine engineering on engineering projects of a level and scope satisfactory to the board, who was recommended for licensure by five personal references, three of whom are professional engineers who have personal knowledge of the applicant's engineering experience and character and ability, who has submitted an application for licensure in accordance with the requirements of R.S. 37:694, and who was duly licensed as a professional engineer by the board; or

6. effective until December 31, 2015, the applicant for licensure as a professional engineer shall be an individual who has demonstrated long-standing experience in naval architecture and marine engineering, who is of good

character and reputation, who has a verifiable record of 30 years or more of progressive engineering experience in naval architecture and marine engineering on engineering projects of a level and scope satisfactory to the board, who was recommended for licensure by five personal references, three of whom are professional engineers who have personal knowledge of the applicant's engineering experience and character and ability, who has submitted an application for licensure in accordance with the requirements of R.S. 37:694, and who was duly licensed as a professional engineer by the board.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:352 (November 1976), amended LR 5:114 (May 1979), LR 5:365 (November 1979), LR 6:735 (December 1980), LR 7:644 (December 1981), LR 10:804 (October 1984), LR 11:362 (April 1985), LR 19:56 (January 1993), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1028 (July 2001), LR 30:1712 (August 2004), LR 32:1619 (September 2006), LR 37:2412 (August 2011), LR 38:2564 (October 2012), LR 39:1060 (April 2013).

Chapter 19. Disciplines of Engineering

§1901. Disciplines

A. ...

B. Each individual licensed under R.S. 37:693(B)(5) and LAC 46:LXI.903.A.3-6 shall be listed by the board as a professional engineer in the discipline of naval architecture/marine engineering.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 5:118 (May 1979), amended LR 5:365 (November 1979), LR 7:646 (December 1981), LR 11:362 (April 1985), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1033 (July 2001), LR 30:1718 (August 2004), LR 39:1061 (April 2013).

Chapter 29. Standards of Practice for Boundary Surveys

§2909. Route Survey

A. Definition

Route Survey—a survey for determining the route of a proposed pipeline, power line, cable, road or other linear facilities, excluding flood protection levees, in order to acquire a right-of-way, servitude or easement from the property owner being crossed.

B. - B.5 ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 37:2418 (August 2011), amended LR 39:1061 (April 2013).

Richard L. Savoie, P.E.
Board Chairman

1304#042

RULE

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Wild Seafood Certification Program (LAC 76:I.701)

The secretary of the Department of Wildlife and Fisheries is allowing wholesale/retail dealers (docks and landings) to be issued a LWSCP permit without the required LDHH permit provided the permit is obtained by January 1, 2014.

Title 76

WILDLIFE AND FISHERIES

**Part I. Wildlife and Fisheries Commission and Agencies
Thereunder**

**Chapter 7. Louisiana Wild Seafood Certification
Program**

§701. Declaration of Policy, Purposes, and Intent

A. - B. ...

* * *

C. Policy

1. Participation in the LWSCP is voluntary and limited to those individuals or entities meeting the following criteria:

a. must possess one of the following resident or non-resident Louisiana licenses:

- i. commercial fisherman’s license;
- ii. senior commercial license;
- iii. fresh products dealer license;
- iv. seafood wholesale/retail dealer;
- v. seafood retail dealer;

b. wholesale/retail dealers must have their facility located within Louisiana. Retailers are not required to have their facility located within Louisiana;

c. eligible participants not requiring a LDWF license include in-state restaurants or grocers who only sell seafood that is fully prepared by cooking for immediate consumption by the consumer, and all out-of-state retailers;

d. must possess and be in compliance with all other state and federal permits, licenses, and laws regarding the buying, acquiring, or handling, from any person, by any means whatsoever, any species of fish or seafood products, whether fresh, frozen, processed, or unprocessed, for sale or resale, whether on a commission basis or otherwise including, but not limited to, any LDWF, LDHH or LDAF permits or regulations. The following exceptions apply.

i. LDWF may issue an LWSCP wholesale/retail dealer permit to docks and landings that do not possess the required LDHH permit. The LWSCP permit shall be issued on the condition that the LDHH permit is obtained by January 1, 2014.

2. - 2.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.15 and R.S. 56:23.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of the Secretary, LR 38:1999 (August 2012), amended by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 39:1062 (April 2013).

Ann L. Taylor
Chairman

1304#056

RULE

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Sharks and Sawfishes—Harvest Regulations
(LAC 76:VII.357)

The Wildlife and Fisheries Commission has amended a Section (LAC 76:VII.357) modifying rules for the commercial harvest of shark, which are part of the existing rule for daily take, possession, and size limits for sharks set by the commission. Authority of adoption of this Rule is included in R.S. 56:6(10), R.S. 56:6(25)(a), R.S. 56:326(E)(2), R.S. 56:326.1, R.S. 56:326.3, R.S. 56:320.2(C), and R.S. 325.2(A).

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishery

§357. Sharks and Sawfishes—Harvest Regulations

A. - H.1. ...

2. Persons possessing a commercial state shark permit but no federal shark permit shall not possess on any one day, or on any trip, or land from any trip, or sell, barter, trade, or exchange in excess of 36 sharks per vessel from the large coastal species group, taken from Louisiana state waters. Persons possessing a commercial state shark permit shall not possess any sandbar sharks unless they also have in their name and in possession a valid federal shark research permit under 50 CFR 635.32(1).

H.3 - O. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(10), R.S. 56:326(E)(2), R.S. 56:326.1, R.S. 56:326.3, R.S. 56:320.2(C), and R.S. 325.2(A).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:543 (March 1999), amended LR 27:2267 (December 2001), LR 30:1507 (July 2004), LR 35:705 (April 2009), LR 39:1062 (April 2013).

Ann L. Taylor
Chairman

1304#055

Notices of Intent

NOTICE OF INTENT

Department of Children and Family Services Child Support Enforcement Section

Administrative Suspension of Licenses
Issued by the State of Louisiana (LAC 67:III.2545)

In accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Children and Family Services proposes to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 4, Support Enforcement Services, Chapter 25, Subchapter L, Section 2545, Administrative Suspension of Licenses Issued by the State of Louisiana.

Pursuant to Act 613 of the 2012 Regular Session of the Louisiana Legislature, the agency proposes to amend Section 2545 Administrative Suspension of Licenses Issued by the State of Louisiana to allow for the issuance of a certificate of partial compliance requesting that the suspension be lifted or modified when an obligor provides evidence of ability to comply with the support order and enters into a written agreement with the department.

Title 67

SOCIAL SERVICES

Part III. Economic Stability

Subpart 4. Support Enforcement Services

Chapter 25. Support Enforcement

Subchapter L. Enforcement of Support Obligations

§2545. Administrative Suspension of Licenses Issued by the State of Louisiana

A. CSE may administratively suspend licenses of child support obligors who are not in compliance with an order for support. License suspension will be considered if income assignment is not effective, or if the obligor is not making payments or is making only periodic payments. An obligor shall meet one of the following criteria to be considered for license suspension:

1. - 2. ...

B. CSE will send a notice of the intent to suspend licenses to the obligor by certified mail with return receipt requested. If anyone in the obligor's household accepts the notice, it shall be considered as successfully served on the obligor. The notice will provide information concerning the following:

1. - 5. ...

6. the right of an unobligated spouse to provide CSE with a notarized affidavit in order to retain use of a shared vehicle.

C. Within 20 days of receipt of the notice, the obligor may act in the following manner to forestall license suspension. CSE shall certify the obligor's non-compliance to the appropriate licensing authorities if the obligor fails to act as detailed in this matter.

1. The obligor may enter into a written agreement to pay current and past-due support. If an obligor fails to

comply with the terms of a written agreement, CSE may proceed with license suspension without further notice.

2. The obligor may file a written objection requesting an administrative hearing to determine whether the obligor is in compliance with an order of support. If the hearing authority rules that the obligor is in arrears with the support order and all legal delays have elapsed, CSE shall proceed with license suspension without further notice.

3. The obligor may provide acceptable evidence of the inability to pay.

D. ...

E. For a driver's or vehicular license, CSE shall be sensitive to the obligor's needs to retain the license for work purposes or to provide medical transportation to a dependent person. In some situations, CSE may suspend driving privileges for specific times of the day or for specific days of the week.

F. CSE shall issue a release certificate if an obligor becomes compliant with a support order and is eligible to have a license reissued. Such certificate will be sent to the agency or authority that suspended the obligor's license.

G. CSE may issue a certificate of partial compliance requesting that the suspension be lifted or modified if an obligor provides evidence of his ability to comply with the support order and enters into a written agreement with the department. The written agreement will serve as notice of license suspension if obligor fails to comply. Evidence of ability to comply is defined as:

1. a written statement signed by a person authorized to hire and pay wages which includes the address for the income withholding order form to be sent;

2. a copy of lease or rental agreement that indicates the obligors ability to provide a service that will result in self-employment income; or

3. any other evidence presented by an obligor that is approved by the State's IV-D Director or the IV-D Director's designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:315.40 et seq.; 42 U.S.C. 666.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, Support Enforcement Services, LR 27:2264 (December 2001), amended by the Department of Social Services, Office of Family Support, LR 31:1103 (May 2005), amended by the Department of Children and Family Services, Child Support Enforcement Section, LR 39:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? This Rule will increase the stability of the family.

2. What effect will this Rule have on the authority and rights of persons regarding the education and supervision of their children? This Rule will improve the ability of obligors to provide support to their children.

3. What effect will this Rule have on the functioning of the family? This Rule will provide parents with avenues in providing consistent support to their child(ren).

4. What effect will this Rule have on family earnings and family budget? This Rule will impact the disposable income.

5. What effect will this Rule have on the behavior and personal responsibility of children? This Rule will provide parents with avenues in providing consistent support to their child(ren).

6. Is the family or local government able to perform the function as contained in this proposed Rule? The government is able to perform this function to assist the family. The family will be able to perform the functions.

Poverty Impact Statement

1. What effect will this Rule have on household income, assets and financial security? This Rule will further the department's potential to increase the household income, assets and financial security of child(ren) living separate and apart from one or both parents.

2. What effect will this Rule have on early childhood development and preschool through postsecondary education development? This Rule will effect early childhood development and preschool through postsecondary development by increasing stability in the home.

3. What effect will this Rule have on employment and workforce development? This Rule will allow for lifting suspensions of licenses which are required for work, when non-custodial parents are in partial compliance with orders to pay child support.

4. What effect will this Rule have on child and dependent care, housing, health care, nutrition, transportation and utilities assistance? This Rule will improve the incomes of the households and therefore have a positive effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed rule on small businesses.

Public Comments

All interested persons may submit written comments through May 29, 2013, to Sammy Guillory, Deputy Assistant Secretary of Programs, Department of Children and Family Services, P. O. Box 94065, Baton Rouge, LA, 70804-9065.

Public Hearing

A public hearing on the proposed Rule will be held on May 29, 2013 at the Department of Children and Family Services, Iberville Building, 627 N. Fourth Street, Seminar Room 1-127, Baton Rouge, LA, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (voice and TDD).

Suzy Sonnier
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Administrative Suspension of Licenses Issued by the State of Louisiana

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This rule proposes to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 4, Chapter 25, Subchapter L, Section 2545 pursuant to Act 613 of the 2012 Regular Legislative Session which allows for lifting or modification of a suspension of licenses when the obligor is in partial compliance with an order for child support.

Section 2545 shall be amended to allow the Department of Children and Family Services (DCFS), Child Support Enforcement (CSE) to issue certificates of partial compliance requesting that the suspension of licenses issued by the State of Louisiana be lifted or modified when an obligor provides evidence of ability to comply with the support order and enters into a written agreement with the department.

The only cost associated with this proposed rule is the cost of publishing rulemaking which is estimated to be approximately \$984 (\$334.56 State and \$649.44 Federal) in Fiscal Year 2012-2013. This is a one-time cost that is routinely included in the department's budget.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of this rule will have no effect on state or local revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no anticipated costs to any persons or non-governmental groups. There are potential economic benefits to obligors of support orders that may have their licenses reinstated under this proposed rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated impact on competition and employment.

Sammy Guillory
Deputy Assistant Secretary
1304#096

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Children and Family Services Child Support Enforcement Section

Income Assignment (LAC 67:III.2509)

In accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Children and Family Services (DCFS) proposes to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 4, Support Enforcement Services, Chapter 25, Subchapter B, Section 2509, Income Assignment.

Sections 466(a)(1), (a)(8) and 466(b)(6)(A)(ii) of the Social Security Act mandates that the state have laws requiring the use of procedures for the withholding of income consistent with the Act to increase the effectiveness of the Child Support Enforcement program. These procedures specify that employers of any absent parent who

becomes subject to withholding must be given notice in a standard format prescribed by the Secretary. The prescribed format is disseminated by the Administration of Children and Families, Office of Child Support Enforcement in the form of an Office of Management and Budget (OMB) form. DCFS proposes to amend Section 2509 Income Assignment to require the use of the OMB form to adhere with federal law.

**Title 67
SOCIAL SERVICES**

Part III. Economic Stability

Subpart 4. Support Enforcement Services

Chapter 25. Support Enforcement

Subchapter B. Support Obligation

§2509. Income Assignment

A. In all new or modified child support orders enforced by Child Support Enforcement Section (CSE) and all new child support orders after January 1, 1994, that are not being enforced by CSE, the court shall order an immediate income assignment unless a written agreement exists between the parties for an alternate arrangement, or the court finds good cause not to require an immediate income assignment. The notice given to employer shall be issued on the federally-approved Income Withholding Order (IWO) form as required by federal law. Employers shall remit any amounts withheld through income assignment within seven days.

B. In any case in which CSE is providing services, if not previously subject to income assignment, the order shall become subject to withholding, if arrearages occur, without the need for a judicial or administrative hearing. Orders enforced by CSE will be subject to withholding without advance notice to the obligor. The payor of income is notified to withhold an amount for current support plus an additional amount, determined by CSE toward any arrears owed. The amount subject to be withheld cannot exceed the percentage of disposable income as defined in R.S. 13:3881 or the federal wage garnishment.

C - D. ...

E. All income assignment orders shall be payable through the Louisiana state disbursement unit. Payments shall be made payable to the Department of Children and Family Services and mailed to:

Centralized Collection Unit
Post Office Box 260222
Baton Rouge, LA 70826-0222.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:236.3 and 45 CFR 303.100, P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:1083 (November 1985), amended by the Department of Social Services, Office of Eligibility Determinations, LR 16:33 (January 1990), amended by the Department of Social Services, Office of Family Support, LR 23:748 (June 1997), LR 26:356 (February 2000), LR 36:74 (January 2010), amended by the Department of Children and Family Services, Child Support Enforcement Section, LR 39:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? This Rule will increase the stability of the family.

2. What effect will this Rule have on the authority and rights of persons regarding the education and supervision of

their children? This Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this Rule have on the functioning of the family? This Rule will streamline the ability of employers to withhold support and thereby provide income to families.

4. What effect will this Rule have on family earnings and family budget? This Rule may increase the disposal income of families.

5. What effect will this Rule have on the behavior and personal responsibility of children? This Rule will improve a parent's ability to providing support to their child(ren).

6. Is the family or local government able to perform the function as contained in this proposed Rule? The family will be able to perform the functions. No effect to local government.

Poverty Impact Statement

1. What effect will this Rule have on household income, assets and financial security? This Rule will further the department's potential to increase the household income, assets and financial security of child(ren) living separate and apart from one or both parents.

2. What effect will this Rule have on early childhood development and preschool through postsecondary education development? This Rule will effect early childhood development and preschool through postsecondary development by increasing stability in the home.

3. What effect will this Rule have on employment and workforce development? This Rule has no effect on employment and workforce development.

4. What effect will this Rule have on child and dependent care, housing, health care, nutrition, transportation and utilities assistance? This Rule will improve the incomes of the households and therefore have a positive effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed rule on small businesses.

Public Comments

All interested persons may submit written comments through May 28, 2013, to Sammy Guillory, Deputy Assistant Secretary of Programs, Department of Children and Family Services, P.O. Box 94065, Baton Rouge, LA, 70804-9065.

Public Hearing

A public hearing on the proposed Rule will be held on May 28, 2013 at the Department of Children and Family Services, Iberville Building, 627 N. Fourth Street, Seminar Room 1-127, Baton Rouge, LA, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special

services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For Assistance, call (225) 342-4120 (Voice and TDD).

Suzy Sonnier
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Income Assignment**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This rule proposes to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 4, Chapter 25, Subchapter B, Section 2509 pursuant to Section 466(a)(1), (a)(8) and 466(b)(6)(A)(ii) of the Social Security Act that direct states to require themselves, tribes, territories, courts, tribunals, attorneys, and individuals to use of the federally approved Income Withholding for Support (IWO) form to notify employers of income withholding orders. Therefore, section 2509 shall be amended to require employers be notified of income withholding on the federally approved IWO form as required by federal law.

The only cost associated with this proposed rule is the cost of publishing rulemaking which is estimated to be approximately \$820 (\$278.80 State and \$541.20 Federal) in Fiscal Year 2012-2013. This is a one-time cost that is routinely included in the department's annual operating budget.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of this rule will have no effect on state or local revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no anticipated costs to any persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated impact on competition and employment.

Sammy Guillory
Deputy Assistant Secretary
1304#095

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Children and Family Services
Economic Stability Section**

Use of TANF Benefits
(LAC 67:III.1259 and 5351)

In accordance with the provisions of the Administrative Procedure Act R.S. 49:953 (A), the Department of Children and Family Services (DCFS) proposes to adopt LAC 67:III, Subpart 2 Family Independence Temporary Assistance Program (FITAP), Chapter 12, Subchapter B, Section 1259 and Subpart 13 Kinship Care Subsidy Program (KCSP), Chapter 53, Subchapter B, Section 5351. Adoption is pursuant to the authority granted to the department by Louisiana's Temporary Assistance for Needy Families (TANF) Block Grant.

Sections 1259 Use of FITAP Benefits and 5351 Use of KCSP Benefits adopt provisions necessary to prevent cash assistance provided under the FITAP and KCSP programs from being used in any electronic benefit transfer (EBT) transaction in a liquor store, gambling casino or gaming establishment, or any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment purposes, or at any retailer for the purchase of an alcoholic beverage, a tobacco product, or a lottery ticket. Penalties are defined for recipients who are determined to violate these provisions.

The proposed Rule is aimed at preventing TANF transactions at specified locations and for certain types of purchases determined to be inconsistent with the purpose of TANF, which is financial assistance to help pay for the family's ongoing basic needs, such as food, shelter, and clothing. The proposed Rule is necessary to comply with the Middle Class Tax Relief and Job Creation Act of 2012, Section 4004 (Pub. L. 112-96). Failure to adopt these provisions could result in noncompliance with federal regulations and the imposition of penalties.

This action was made effective by an Emergency Rule dated and effective March 1, 2013.

Title 67

SOCIAL SERVICES

Part III. Economic Stability

Subpart 2. Family Independence Temporary Assistance Program

Chapter 12. Application, Eligibility, and Furnishing Assistance

Subchapter B. Conditions of Eligibility

§1259. Use of FITAP Benefits

A. FITAP benefits shall not be used in any electronic benefit transfer transaction in:

1. any liquor store;
2. any gambling casino or gaming establishment; or
3. any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment purposes.

B. FITAP benefits shall not be used in any electronic benefit transfer transaction at any retailer for the purchase of:

1. an alcoholic beverage as defined in R.S. 14.93.10(3);
2. a tobacco product as defined in R.S. 14.91.6(B); or
3. a lottery ticket as defined in R.S. 47:9002(2).

C. For purposes of this Section, the following definitions and provisions apply:

1. The term "liquor store" is defined as any retail establishment that sells exclusively or primarily intoxicating liquor. It does not include a grocery store that sells both intoxicating liquor and groceries, including staple foods.

2. The terms "gambling casino" and "gaming establishment" do not include a grocery store that sells groceries, including staple foods, and that also offers, or is located within the same building or complex as casino, gambling, or gaming activities, or any other establishment that offers casino, gambling, or gaming activities incidental to the principal purpose of the business.

3. The term "electronic benefit transfer transaction" means the use of a credit or debit card service, automated

teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service.

D. The FITAP case of a FITAP recipient who is determined to have violated the provisions of this Section shall be closed for the following time periods:

1. 12 months for the first offense;
2. 24 months for the second offense; and
3. permanently for the third offense.

AUTHORITY NOTE: Promulgated in accordance with P.L. 112-96.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability, LR 39:

Subpart 13. Kinship Care Subsidy Program (KCSP)
Chapter 53. Application, Eligibility, and Furnishing Assistance

Subchapter B. Conditions of Eligibility

§5351. Use of KCSP Benefits

A. KCSP benefits shall not be used in any electronic benefit transfer transaction in:

1. any liquor store;
2. any gambling casino or gaming establishment; or
3. any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment purposes.

B. KCSP benefits shall not be used in any electronic benefit transfer transaction at any retailer for the purchase of:

1. an alcoholic beverage as defined in R.S. 14.93.10(3);
2. a tobacco product as defined in R.S. 14.91.6(B); or
3. a lottery ticket as defined in R.S. 47:9002(2).

C. For purposes of this Section, the following definitions and provisions apply:

1. The term "liquor store" is defined as any retail establishment that sells exclusively or primarily intoxicating liquor. It does not include a grocery store that sells both intoxicating liquor and groceries, including staple foods.

2. The terms "gambling casino" and "gaming establishment" do not include a grocery store that sells groceries, including staple foods, and that also offers, or is located within the same building or complex as casino, gambling, or gaming activities, or any other establishment that offers casino, gambling, or gaming activities incidental to the principal purpose of the business.

3. The term "electronic benefit transfer transaction" means the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service.

D. The KCSP case of a KCSP recipient who is determined to have violated the provisions of this Section shall be closed for the following time periods:

1. 12 months for the first offense;
2. 24 months for the second offense; and
3. permanently for the third offense.

AUTHORITY NOTE: Promulgated in accordance with P.L. 112-96.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability, LR 39:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? This proposed Rule will have no impact on the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? This proposed Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This proposed Rule will have no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? This proposed Rule will have no effect on the family's earnings or budget.

5. What effect will this have on the behavior and personal responsibility of children? This proposed Rule will have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, these functions are department functions.

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The department, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

All interested persons may submit written comments through May 30, 2013, to Sammy Guillory, Deputy Assistant Secretary of Programs, Department of Children and Family Services, P.O. Box 94065, Baton Rouge, LA, 70804-9065.

Public Hearing

A public hearing on the proposed Rule will be held on May 30, 2013, at the Department of Children and Family Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-127, Baton Rouge, Louisiana, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call Area Code 225-342-4120 (voice and TDD).

Suzu Sonnier
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Use of TANF Benefits

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 124—Supplemental Educational Services
(LAC 28:CXXXV.Chapter 1)

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The Department of Children and Family Services (DCFS) proposes to adopt LAC 67:III, Subpart 2 Family Independence Temporary Assistance Program (FITAP), Chapter 12, Subchapter B, Section 1259—Use of FITAP Benefits and Subpart 13 Kinship Care Subsidy Program (KCSP), Chapter 53, Subchapter B, Section 5351—Use of KCSP Benefits that prevent the use of cash assistance benefits at certain locations and for certain types of purchases.

In accordance with Federal law (Middle Class Tax Relief and Job Creation Act of 2012, Section 4004, Pub. L. 112-96), sections 1259 and 5351 adopt provisions necessary to prevent cash assistance provided under the FITAP and KCSP programs from being used in any electronic benefit transfer (EBT) transaction in a liquor store, gambling casino or gaming establishment, or any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclad state for entertainment purposes, or at any retailer for the purchase of an alcoholic beverage, a tobacco product, or a lottery ticket. Penalties are defined for recipients who are determined to violate these provisions. The proposed rule is aimed at preventing Temporary Assistance for Needy Families (TANF) transactions at specified locations and for certain types of purchases determined to be inconsistent with the purpose of TANF, which is financial assistance to help pay for the family's ongoing basic needs, such as food, shelter, and clothing.

The department does not anticipate any increase in the EBT vendor contract as a result of this proposed rule. The only cost associated with this rule is the cost of publishing rulemaking, which is estimated to be approximately \$1,640 (\$820 State and \$820 Federal) in Fiscal Year 2012-2013.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of this proposed rule will have no effect on state or local revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule has penalties for recipients who violate these provisions. The minimum penalty is suspension of benefits for a minimum of 12 months for the first offense and the maximum penalty is permanent suspension of benefits for the third offense.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated impact on competition and employment.

Sammy Guillory
Deputy Assistant Secretary
1304#097

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement the repeal of *Bulletin 124—Supplemental Educational Services*. Per the approval of Louisiana's Elementary and Secondary Education Act (ESEA) flexibility waiver in May 2012, section 1116(e) of No Child Left Behind has been waived by the United States Department of Education. As such, the procedural requirements and definitions for supplemental education services enumerated in Bulletin 124 no longer apply.

Title 28

EDUCATION

Part CXXXV. Bulletin 124—Supplemental Educational Services

Chapter 1. Supplemental Educational Services

§101. Definition of Supplemental Educational Services

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2044 (October 2007), repealed LR 39:

§103. Supplemental Educational Services Model

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2044 (October 2007), repealed LR 39:

§105. Supplemental Educational Service Providers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2044 (October 2007), repealed LR 39:

§107. State Educational Agency Role and Responsibilities

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2045 (October 2007), repealed LR 39:

§109. Local Educational Agency Role and Responsibilities

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2046 (October 2007), repealed LR 39:

§111. Optional LEA Responsibilities

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2046 (October 2007), repealed LR 39:

§113. SES Agreement between Provider and LEA

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2046 (October 2007), repealed LR 39:

§115. SES Provider Responsibilities

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2047 (October 2007), repealed LR 39:

§117. State Approval and Sanctions of SES Providers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2047 (October 2007), repealed LR 39:

§119. SES Appeal Process—LEA

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2048 (October 2007), repealed LR 39:

§121. SES Provider Request for Appeal

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2048 (October 2007), repealed LR 39:

§123. SES Appeal Process—State

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2048 (October 2007), repealed LR 39:

§125. SES Provider Request for Appeal

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2049 (October 2007), repealed LR 39:

§127. SES Provider Appeals on the Record;

Submissions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2049 (October 2007), repealed LR 39:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with Section 973 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? No.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? Yes.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

Interested persons may submit written comments via the U.S. mail until 4:30 p.m., May 9, 2013, to Heather Cope,

Heather Cope
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 124—Supplemental Educational Services**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policy will not result in an increase in costs or savings to state or local governmental units but will provide an opportunity for local education agencies to use Title I funding for alternate purposes. The current policy was approved to provide compliance guidance to local education agencies regarding Section 1116(e) of the No Child Left Behind Act. Per the approval of Louisiana's Elementary and Secondary Education Act (ESEA) Flexibility Waiver in May 2012, Section 1116(e) of the No Child Left Behind Act has been waived by the United States Department of Education. As such, the procedural requirements and definitions for Supplemental Education Services enumerated in this policy no longer apply. This proposed revision will repeal the current policy.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no costs or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1304#032

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 135—Health and Safety
(LAC 28:CLVII.305 and 307)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 135—Health and Safety*. The proposed policy changes are the result of comments from educators and health professionals. Pursuant to R.S. 17:436.3, revisions to Sections 305 and 307 of this proposed Rule are being jointly promulgated by the Board of Nursing and the Board of Elementary and Secondary Education.

**Title 28
EDUCATION**

Part CLVII. Bulletin 135—Health and Safety

Chapter 3. Health

§305. Administration of Medication

A. - A.1. ...

B. Written Orders, Appropriate Containers, Labels and Information

1. Medication shall not be administered to any student without an order from a Louisiana, or adjacent state, licensed physician, dentist, or other authorized healthcare prescriber and it shall include the following information:

- a. the student's name;
- b. the name and signature of the physician, dentist, or other authorized healthcare prescriber;
- c. the physician/dentist/other authorized healthcare prescriber's business address, office phone number, and emergency phone numbers;
- d. the frequency and time of the medication;
- e. the route and dosage of the medication; and
- f. a written statement of the desired effects and the child specific potential of adverse effects.

2. Medication shall be provided to the school by the parent or guardian in the container that meets acceptable pharmaceutical standards and shall include the following information:

- a. - i. ...
- j. physician's, dentist's, or other authorized healthcare prescriber's name.

3. - 3.f. ...

C. Administration of Medication—General Provisions

1. - 3. ...

4. Except in Paragraph C.2, only oral medications, inhalants, topical ointments for diaper rash, and emergency medications shall be administered at school by unlicensed personnel.

5. Each student shall be observed by a school employee for a period of 45 minutes following the administration of medication. This observation may occur during instruction time.

6. School medication orders shall be limited to medication which cannot be administered before or after school hours.

D. - G.1.a.v. ...

vi. name of physician, dentist, or other authorized healthcare prescriber;

1.a.vii. - 5.f. ...

H. Student Confidentiality

1. All student information shall be kept confidential.

NOTE. Repealed.

1.1. Notwithstanding any provision of law or any rule, regulation, or policy to the contrary, the governing authority of each public elementary and secondary school shall permit the self-administration of medications by a student with asthma or diabetes or the use of auto-injectable epinephrine by a student at risk of anaphylaxis, provided that the student's parent or legal guardian provides the school in

which the student is enrolled with the following documentation:

- a. written authorization for the student to carry and self-administer such prescribed medications;
- b. written certification from a licensed medical physician or other authorized prescriber that the student:
 - i. has asthma, diabetes, or is at risk of having anaphylaxis;
 - ii. has received instruction in the proper method of self administration of the student's prescribed medications to treat asthma, diabetes, or anaphylaxis;
- c. written treatment plan from the student's licensed medical physician or authorized prescriber for managing asthma, diabetes, or anaphylactic episodes. The treatment plan must be signed by the student, the student's parent or other legal guardian, and the student's licensed medical physician or other authorized prescriber and shall also contain the following information:
 - i. the name, purpose, and prescribed dosage of the medications to be self-administered;
 - ii. the time or times the medications are to be regularly administered and under what additional special circumstances the medications are to be administered;
 - iii. the length of time for which the medications are prescribed;
- d. any other documentation required by the governing authority of the public elementary or secondary school.

2. The documentation required by Paragraph 1 of this Subsection shall be kept on file in the office of the school nurse or other designated school official.

3. The governing authority of the public elementary and secondary school shall inform the parent or other legal guardian of the student in writing that the school and its employees shall incur no liability as a result of any injury sustained by the student from the self-administration of medication used to treat asthma, diabetes, or anaphylaxis. The parent or legal guardian of the student shall sign a statement acknowledging that the school shall incur no liability and that the parent or other legal guardian shall indemnify and hold harmless the school and its employees against any claims that may arise relating to the self-administration of medications used to treat asthma or anaphylaxis.

4. For the purposes of the Subsection:

Auto-Injectable Epinephrine—a medical device for the immediate self-administration of epinephrine by a person at risk for anaphylaxis.

Glucago—is a hormone that raises the level of glucose in the blood. *Glucagon*, given by injection is used to treat severe hypoglycemia.

Inhaler—a medical device that delivers a metered dose of medication to alleviate the symptoms of asthma.

Insulin Pen—a pen-like device used to put insulin into the body.

Insulin Pump—a computerized device that is programmed to deliver small, steady, doses of insulin.

5. A student who has been granted permission to self-administer medication pursuant to this Subsection shall be

allowed to carry and store with the school nurse or other designated school official an inhaler, auto-injectable epinephrine, or insulin at all times.

6. Permission for the self-administration of asthma or diabetes medications or use of auto-injectable epinephrine by a student shall be effective only for the school year in which permission is granted. Permission for self-administration of asthma or diabetes medications or the use of auto-injectable epinephrine by a student shall be granted each subsequent school year, provided all of the requirements of this Subsection are fulfilled.

7. Upon obtaining permission to self-administer asthma or diabetes medication or to use auto-injectable epinephrine pursuant to this Subsection, a student shall be permitted to possess and self-administer such prescribed medication at any time while on school property or while attending a school sponsored activity.

8. A student who uses any medication permitted pursuant to this Subsection in a manner other than prescribed shall be subject to disciplinary action; however, such disciplinary action shall not limit or restrict such student's immediate access to such prescribed medication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:436.1 and R.S. 17:436.1(J).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education and the Louisiana State Board of Nursing, LR 39:1030 (April 2013), amended LR 39:

§307. Diabetes Management and Treatment

NOTE: This Rule was developed in coordination with the Louisiana State Board of Nursing (LSBN). Any waivers, deletions, additions, amendments, or alterations to this policy shall be approved by both BESE and LSBN.

A. Diabetes Treatment Plans

1. - 2. ...

3. The diabetes management plan shall be kept on file in the school in which the child is enrolled and shall include:

a. a detailed evaluation of the student's level of understanding of his condition and his ability to manage his diabetes;

3.b. - 4.d. ...

5. The school nurse will be given not less than five school days to develop the individualized healthcare plan (IHP) and shall implement the IHP within 10 school days upon receipt of the diabetes treatment plan.

a. The school nurse must assess the stability of the student's diabetes for the school setting prior to the development of the IHP in order to provide continuity of care in the school setting.

A.6. - B.1. ...

2. The school nurse or the trained unlicensed diabetes care assistant authorized by the school nurse shall provide care to a student with diabetes, or assist a student with the self-care of his diabetes, in accordance with the student's diabetes management and treatment plan and IHP.

3. - 5.c. ...

C. Unlicensed Diabetes Care Assistants—General Information

1. The school nurse may utilize a trained unlicensed diabetes care assistant in the treatment and care of a student with diabetes.

2. - 5.a. ...

b. unlicensed diabetes care assistants shall serve under the supervision of a school nurse for medication administration.

i. where a school nurse is not physically present, he or she must be available by phone for immediate access to the school.

6. Protocols for administration of medication for the treatment of diabetes shall be consistent with Bulletin 135, §305.

D. - E.3.d. ...

e. Administration of medication as ordered by physician, other authorized healthcare prescriber in accordance with school policies, procedures and the student's diabetes management treatment plan.

E.3.f. - I.5. ...

6. Follow protocols for administration of medication consistent with Bulletin 135, §305.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:436.3.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education and the Louisiana State Board of Nursing, LR 39:1033 (April 2013), amended LR 39:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with Section 973 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? Yes.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

Interested persons may submit written comments via the U.S. mail until 4:30 p.m., May 9, 2013, to Heather Cope, Executive Director, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Heather Cope
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Bulletin 135—Health and Safety

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policy will not result in an increase in costs or savings to state or local governmental units. The proposed policy revisions are based on comments and recommendations from educators and health professionals and clarify the situations wherein diabetes medication may be administered and by whom.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no costs or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1304#031

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs—GO Grant Framework
(LAC 28:IV.Chapter 12)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, R.S. 17:3048.1, R.S. 17:3048.5 and R.S. 17:3048.6).

This rulemaking implements changes made by the Board of Regents to the GO Grant Program that decentralize the program to provide more autonomy to participating colleges and universities, particularly in determining award amounts.

Title 28

EDUCATION

Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs

Chapter 12. Louisiana GO Grant

§1201. General Provisions

A. Legislative Authority

1.a. In accordance with the requirements of Act 695 of the 2004 Regular Session of the Legislature, the Board of Regents developed the GO Grant Program. The program was reviewed and approved by both the Senate Committee on Education and the House Committee on Education on April 12, 2007.

b. Act 655 of the 2010 Regular Session of the Legislature establishes the GO Grant Program in R.S. 17:3046 and 3046.1. The Act provides that the Board of Regents shall establish the criteria for initial and continuing eligibility, the method for determining the award amount, and other requirements not otherwise provided in the statute. The Act further provides that the GO Grant Program shall be administered by the Louisiana Student Financial Assistance Commission through the Louisiana Office of Student Financial Assistance.

2. The Louisiana Office of Student Financial Assistance (LOSFA) administers the GO Grant Program in accordance with R.S. 17:3046 and a memorandum of understanding by and between the Louisiana Board of Regents and the Louisiana Student Financial Assistance Commission.

B. Description and Purpose. The Louisiana GO Grant assists those students who can demonstrate financial need to pay for the cost of postsecondary education. The GO Grant is used to pay a portion of the cost of attendance at an eligible Louisiana institution.

C. Award Amount

1. The minimum and maximum annual award amounts and the lifetime award amount, if any, shall be established by the Board of Regents on an annual basis and such amounts shall be published by LOSFA to the eligible Louisiana institutions.

2. Each institution shall determine the award amounts for eligible students at that institution based on the requirements in these rules, the allocation to the institution, the institution's financial aid packaging policy, and the guidance established by the Board of Regents and published by LOSFA.

D. The total amount awarded for GO Grants during any academic year is limited to the total amount appropriated for the award for the academic year. Eligibility for an award during any particular semester, quarter or term does not guarantee that a student will receive the GO Grant in a subsequent semester, quarter or term.

E. Allocation of Funds.

The amount allocated to an eligible institution will be determined by dividing the amount of the institution's prior year's allocation that was expended by the total amount appropriated for that academic year multiplied by the total amount appropriated for the current year.

F. Reallocation of Funds. Uncommitted funds allocated to a particular institution shall be reallocated if not committed by the deadline set by LOSFA. Uncommitted funds shall be apportioned among those institutions that have committed all funds allocated to the institution before the deadline, and have students who are eligible for an award and did not receive it.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2614 (December 2007), amended LR 34:236 (February 2008), LR 35:2349 (November 2009), LR 39:

§1203. Definitions

A. The following definitions shall be applicable to the Louisiana GO Grant Program. Words and terms not otherwise defined in this Chapter shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

Academic Year—the academic year begins with the fall semester or term of the award year, includes the winter term, if applicable, and concludes with the completion of the spring semester or term of the award year. Summer terms are not included in the academic year unless authorized by the Board of Regents and only if the post-secondary institution provides students with Pell Grants or financial need grants during the summer session.

Administering Agency—the Louisiana Student Financial Assistance Commission through the Louisiana Office of Student Financial Assistance (LOSFA).

Cost of Attendance—the total cost for a student to attend a particular eligible Louisiana institution, usually expressed as an academic year figure. This cost shall be determined by the institution attended in compliance with Title IV of the Higher Education Act of 1965, as amended, and shall be annually updated and adopted by the institution.

Dependent Student—a student who does not qualify as an independent student for purposes of qualifying for Title IV aid.

Eligible Louisiana Institution—

a. Louisiana public colleges or universities and regionally accredited independent colleges or universities in the state that are members of the Louisiana Association of Independent Colleges and Universities, and

b. Louisiana public colleges that have been granted regional Candidacy Status, but are not yet eligible to participate in Title IV programs. Candidacy Status institutions must require students to complete a FAFSA and

the institution must determine a student's eligibility in accordance with rules under this chapter.

Enrollment—registration in programs of study at an eligible Louisiana institution.

Expected Family Contribution (EFC)—an amount, determined by a formula established by Congress, that indicates how much of a family's financial resources should be available to help pay for the student's cost of attendance. Factors such as taxable and nontaxable income, assets (such as savings and checking accounts), and benefits (for example, unemployment or Social Security) are all considered in this calculation.

Excess Award—an award in excess of what is authorized by these rules and the guidance established by the Board of Regents and published by LOSFA.

Federal Pell Grant—the Pell Grant provided under Title IV of the Higher Education Act of 1965, as amended.

Financial Need—the student's costs of attendance at the institution attended minus the expected family contribution (EFC).

Financial Need Grant—an institutional grant provided by the state for students with financial need as evidenced by the data reported on the FAFSA at a Louisiana public college that has been granted regional candidacy status and is eligible to participate in the Go Grant Program.

Full Time—a student enrolled in an eligible Louisiana institution who is considered full time by the school.

Go Grant Award Amount—the award amount actually paid during an academic year.

Half Time—a student enrolled in an eligible Louisiana institution who is not full time but is enrolled in at least six semester credit hours, or four hours at a term school.

Independent Student—a student who meets at least one of the criteria listed in Subparagraphs a-f or has been determined independent by a financial aid officer exercising professional judgment in accordance with applicable provisions of the Higher Education Act of 1965, as amended:

- a. reached 24 years of age prior to January of the year preceding the academic year for which the student is applying for aid;
- b. is currently serving on active duty for purposes other than training or is a veteran of the U.S. Armed Forces, including a student who was activated to serve in Operation Desert Storm;
- c. is an orphan or a ward of the court or was a ward of the court until age 18;
- d. has legal dependents other than a spouse;
- e. is a graduate or professional student;
- f. is married.

Less Than Half Time—A student enrolled in an eligible Louisiana institution who is not full time and is enrolled in less than six semester credit hours or four hours at a term school.

Louisiana Resident—

- a. a dependent or independent student whose true, fixed, and permanent home of residence is Louisiana as reported on the Free Application for Federal Student Aid (FAFSA);
- b. a dependent student whose non-custodial parent completes a residency affidavit in subparagraph e below that establishes Louisiana residency;

- c. a dependent student whose parent is transferred out of Louisiana temporarily by his/her employer and that parent completes a residency affidavit in subparagraph e below that establishes Louisiana residency;

- d. a dependent student whose parent is on active duty in the Armed Forces and who is stationed in Louisiana under permanent change of station orders, or an independent student who is on active duty military status in the Armed Forces and is stationed in Louisiana under permanent change of station orders;

- e. if the dependent or independent student does not report Louisiana as his true, fixed, and permanent home of residence as Louisiana on the FAFSA, the administering agency may require an independent student applicant or the parent of a dependent student applicant to show proof of residency. Residency may be established by completion of a standard affidavit developed by the administering agency. Such affidavits must be completed in their entirety by the independent student applicant or by at least one parent of the dependent student applicant and be sworn to and notarized by a licensed notary public. Further, the affiant shall be required to submit records in support of the affidavit to include the following records and such other records as may be required by the administering agency:

- i. if registered to vote, a Louisiana voter registration card; and
- ii. if licensed to drive a motor vehicle, a Louisiana driver's license; and
- iii. if owning a motor vehicle located in Louisiana, a Louisiana registration for that vehicle; and
- iv. if earning a reportable income, a Louisiana tax return;

Satisfactory Academic Progress—a standard established in accordance with the Higher Education Act of 1965, as amended, by the institution at which a GO Grant recipient is enrolled for measuring a student's progress in his or her educational program.

Undergraduate Program—a program of study that is designed to lead to a certificate or undergraduate degree.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3046 et seq.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2615 (December 2007), amended LR 34:236 (February 2008), LR 35:647 (April 2009), LR 35:2349 (November 2009), LR 36:2853 (December 2010), LR 39:

§1205. Initial Eligibility

A. To be initially eligible for a Louisiana GO Grant, a student must:

1. complete the Free Application for Federal Student Aid for the year during which he intends to enroll in college,
2. be a Louisiana resident;
3. receive a federal Pell Grant or a financial need grant;
4. have remaining financial need; and
5. be enrolled in an undergraduate program on at least a half time basis at an eligible Louisiana institution through the fourteenth class day for semester schools, or the ninth class day for quarter and term schools, or for any qualifying summer sessions, at the end of the last day to drop and receive a full refund for the full summer session.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3046 et seq.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2616 (December 2007), amended LR 34:238 (February 2008), LR 35:2349 (November 2009), LR 36:2853 (December 2010), LR 37:1389 (May 2011), LR 38:1953 (August 2012), LR 39:

§1207. Continuing Eligibility

A. A student's eligibility will be reevaluated on the same schedule as eligibility for a federal Pell Grant or a financial need grant is determined at the institution, but at least once annually.

B. To continue to be eligible for a Louisiana GO Grant, a student must:

1. complete the Free Application for Federal Student Aid or the Renewal Application for each year he enrolls in college to be considered for a Pell Grant and the Go Grant,
2. continue to receive the federal Pell Grant or a financial need grant,
3. have remaining financial need, and
4. be enrolled in an undergraduate program on at least a half time basis at an eligible Louisiana institution through the fourteenth class day for semester schools, or the ninth class day for quarter and term schools, or for any qualifying summer sessions, at the end of the last day to drop and receive a full refund for the full summer session.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3046 et seq.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2616 (December 2007), amended LR 34:238 (February 2008), LR 35:2349 (November 2009), LR 36:2853 (December 2010), LR 39:

§1209. Responsibilities of Eligible Louisiana

Institutions

A. Initial Eligibility

1. a. Eligible Louisiana institutions must determine whether the student meets the criterion in Subparagraph a of the definition of *Louisiana resident* in §1203.

b. If this criterion is not met, the student may request that LOSFA make a determination of residency under Subparagraph e of the definition of *Louisiana resident* in §1203.

2. Eligible Louisiana institutions must determine whether a student meets the initial eligibility criteria enumerated in §1205.B.

B. Continuing Eligibility. Eligible Louisiana institutions must determine whether a student meets the continuing eligibility criteria enumerated in §1207 on the same schedule as eligibility for a Pell Grant or a financial need grant is determined at the institution, but at least once annually.

C. Packaging Policy.

1. Eligible Louisiana institutions must establish and use a policy on GO Grant packaging that provides:

a. Procedures for compliance with these rules and the guidance established by the Board of Regents and published by LOSFA for determining the award amount;

b. Record retention to comply with Subsection I of this Section;

c. The basis used to establish any award amount that is less than the maximum award amount allowed;

d. Procedures for distribution of GO Grant funds that ensure the grant is provided to students with the most financial need;

e. Priority for students who are 25 or over;

f. Awards amounts for less than full time students; and

g. Procedures for identification of transfer students and ensuring transfer students receive awards on the same basis as home students.

2. Eligible Louisiana institutions must revise the institution's GO Grant packaging policy as necessary to reflect changes to the GO Grant program rules or guidance issued by the Board of Regents or both.

D. Award Amount. Eligible Louisiana institutions must establish the award amounts for each individual student based on the institution's financial aid packaging policy. The amount awarded must comply with the requirements and limitations established in these rules and the guidance published by LOSFA.

E. Submission of Payment Requests. Each semester, quarter or term, eligible Louisiana institutions shall submit a payment request to LOSFA for students enrolled at the institution who have been determined eligible for a Louisiana GO Grant as follows:

1. for each student eligible for a Louisiana GO Grant who is enrolled at the end of the 14th class day for semester schools, or the 9th class day for quarter and term schools, or for any qualifying summer sessions, at the end of the last day to drop and receive a full refund for the full summer session;

2. the payment request shall include the social security number, college code, term, date, hours attempted, award amount, and amount requested for each student.

3. for students who are enrolled in more than one eligible Louisiana institution, the home school (school paying the Pell Grant or a financial need grant) is responsible for submitting a payment request for the Go Grant based on the total hours enrolled at all institutions.

F. Over Payments

1. No institution shall submit a payment request for GO Grant funds which would result in a student receiving an annual total of more than is authorized in §1201.C.

2. Eligible Louisiana institutions certify by submitting a payment request for a GO Grant that the institution will reimburse LOSFA:

a. for the total amount of any award that is disbursed to ineligible students, and

b. for any amount of an award that is in excess of the maximum annual award or in excess of the maximum lifetime award (if one is established).

G. Excess Award. In the event an excess award occurs during the fall semester or quarter or the winter quarter due to receipt of additional gift aid, the school shall reduce the award amount for the spring accordingly. In the event an excess award occurs during the spring semester or quarter due to receipt of additional gift aid, the school shall document the reason for the excess award.

H. Over Award. In the event the student's total aid exceeds his financial need or the cost of attendance, any federal loan aid included in the total aid package shall be reduced, then institutional and other aid in accordance with institutional practice, then the Louisiana GO Grant, then a TOPS Award, if applicable, shall be reduced by the amount of any remaining over award.

I. Records Retention. Records pertaining to Louisiana GO Grant awards are subject to audit as required by

LASFAC, the Louisiana Board of Regents, and the Louisiana Legislative Auditor. Eligible Louisiana institutions shall maintain all records for a minimum of three years from creation. All such records shall be made available upon request by LASFAC, the Louisiana Board of Regents and/or the Louisiana Legislative Auditor.

J. Each eligible Louisiana institution shall provide a copy of its GO Grant packaging policy as required by §1209.C to LOSFA, when requested.

K. Audits. Eligible Louisiana institutions that participate in the Louisiana GO Grant program grant LOSFA and the Louisiana legislative auditor the right to inspect records and perform on-site audits of each institution's administration of the program for the purpose of determining the institution's compliance with state law and applicable rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3046 et seq.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2617 (December 2007), amended LR 34:239 (February 2008), LR 35:2349 (November 2009), LR 36:2853 (December 2010), LR 39:

§1213. Responsibilities of LOSFA

A. LOSFA shall pay each eligible Louisiana institution the amount requested by the eligible Louisiana institution in accordance with the provisions of §1211.E.

B. LOSFA shall publish to the eligible Louisiana institutions on an annual basis:

1. the minimum and maximum annual awards, and the maximum lifetime award, if any;
2. any limitations on awards;
3. any changes in requirements for calculation of awards; and
4. any other changes in the program made by the Board of Regents.

C. LOSFA shall determine the residency of students who do not meet the criteria enumerated in Subparagraph a of the definition of *Louisiana Resident* in §1203 and notify eligible Louisiana institutions of its determination(s).

D. LOSFA shall maintain a database of all students who have received the GO Grant, included social security number, college code, term, date, hours attempted, award amount, annual amount received, and aggregate amount received. In the event LOSFA receives a payment request in an amount that would exceed the maximum amount payable to a student, LOSFA will require the school to rebill.

E. Adequacy of Funding

1. After the receipt of fall semester or term payment requests, LOSFA shall determine whether sufficient funds are available to pay all anticipated awards for subsequent semesters, terms and sessions of the academic year.

2. In the event projections indicate sufficient funds are not available, LOSFA shall notify the Board of Regents.

3. LOSFA will provide to the Board of Regents information that is necessary to determine appropriate funding amounts upon the request of the Board of Regents.

F. LOSFA shall audit eligible Louisiana institutions to ensure compliance with these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3046 et seq.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2617 (December 2007), amended LR 34:239 (February 2008), LR 35:2350 (November 2009), LR 36:2853 (December 2010), LR 39:

§1215. Responsibilities of LASFAC

A. LASFAC shall promulgate administrative rules in accordance with the Administrative Procedure Act, in consultation with the Louisiana Board of Regents and in accordance with a memorandum of understanding entered into by and between LASFAC and the Louisiana Board of Regents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2618 (December 2007), LR 39:

§1217. Responsibilities of the Board of Regents

A. At least on an annual basis, the Board of Regents shall review the amount appropriated for this program, and:

1. determine the minimum and maximum amount to be received by students attending school;
2. determine whether there is a maximum lifetime award and, if so, set the maximum;
3. determine what, if any, limitations should be placed on awards;
4. establish any changes in requirements for calculation of awards; and
5. provide for any other changes in the program.

B. The Board of Regents shall provide notice to LOSFA of any changes to the program in sufficient time to allow timely implementation.

C. In the event of receipt of notice of a shortfall and additional funds are not allocated for payment of all anticipated awards for subsequent semesters, terms and sessions during the academic year, the Board of Regents shall develop, approve and deliver a plan to LOSFA to address the shortfall.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3046 et seq.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 35:2350 (November 2009), LR 36:2853 (December 2010), LR 39:

Family Impact Statement

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Poverty Impact Statement

The proposed Rule will have no impact on poverty as described in R.S. 49:973. (SG13144NI)

Small Business Statement

The proposed Rule will have no adverse impact on small businesses as described in R.S. 49:965.2 et seq.

Public Comments

Interested persons may submit written comments on the proposed changes (SG13144NI) until 4:30 p.m., May 10, 2013, to Melanie Amrhein, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Scholarship/Grant Programs—GO
Grant Framework**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule minimizes the need for annual rule changes to incorporate the latest Board of Regent's approved Go Grant framework by specifically addressing those areas that do not change from year to year and to generalize the remainder of the rules to provide for use of the annual framework as the basis for administering the program. Higher education institutions have flexibility in awarding Go Grants under current rules and the Go Grant Framework adopted by the Board of Regents. The proposed rules codify institutional flexibilities and establish guidelines allowing institutions to award Go Grants based on their financial aid packaging policy and the financial needs of their students. However, adoption of the proposed rule will not result in any additional costs to state or local governments because Go Grant expenditures are limited to the amounts appropriated and keeping program costs within the annual appropriation.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

Revenue collections of state and local governments will not be affected by the proposed changes.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

Under the proposed rules, the annual Board of Regent's approved framework provides specific guidance to colleges and universities to aid them in developing a GO Grant Packaging Policy that allows them to distribute Go Grant funds allocated to that specific school. Some eligible students may receive more funding, some less funding and some may be denied funding depending on the school's policy that is developed based on the requirements of the framework and rules, and the availability and demand for funding at that school.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

The proposed rule will have no impact on competition or employment.

George Badge Eldredge
General Counsel
1304#052

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of Student Financial Assistance
Tuition Trust Authority**

**START Saving Program—2012 Interest Rate
(LAC 28:VI.311 and 315)**

The Louisiana Tuition Trust Authority announces its intention to amend its START Saving Program rules (LSA-R.S. 17:3091 et seq.).

This rulemaking increases the amount of interest earned during the year an account is terminated that will not be refunded from \$3 to \$10 dollars. This rulemaking adds the applicable interest rates for the 2012 calendar year. (ST13145NI)

Title 28

EDUCATION

**Part VI. Student Financial Assistance—Higher
Education Savings**

Chapter 3. Education Savings Account

**§311. Termination, Refund, and Rollovers of an
Education Savings Account**

A. - G. ...

H. Refund Payments. Payment of refunds for voluntary termination under §311.F or partial refunds of accounts pursuant to §311.F.3 shall be made within 30 days of the date on which the account was terminated. The termination refund shall consist of the principal remaining in the account and interest remaining in the account accrued on the principal through the end of the last calendar year. Interest earned in excess of \$10 during the calendar year of termination will be refunded within 45 days of the date the state treasurer has announced the interest rate for the preceding year. Interest earned of \$10 or less during the calendar year of termination will be forfeited to the Louisiana Education and Tuition Savings Fund.

I. - I.2.b. ...

AUTHORITY NOTE: Promulgated in accordance with 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:712 (June 1997), amended LR 24:1268 (July 1998), LR 25:1794 (October 1999), LR 26:2260 (October 2000), LR 27:37 (January 2001), LR 27:1222 (August 2001), LR 27:1876 (November 2001), LR 28:450 (March 2002), LR 28:777 (April 2002), LR 28:2334 (November 2002), LR 29:556 (April 2003), LR 30:786 (April 2004), LR 30:1169 (June 2004), LR 30:2302 (October 2004), LR 31:639 (March 2005), LR 32:1433 (August 2006), LR 32:2240 (December 2006), LR 33:443 (March 2007), LR 34:1885 (September 2008), LR 35:1492 (August 2009), LR 36:492 (March 2010), LR 36:2030 (September 2010), LR 38:1954 (August 2012), LR 39:

§315. Miscellaneous Provisions

A. - B.26. ...

27. For the year ending December 31, 2012, the Louisiana Education Tuition and Savings Fund earned an interest rate of 2.52 percent.

28. For the year ending December 31, 2012, the Savings Enhancement Fund earned an interest rate of 2.57 percent.

C. - S.2. ...

AUTHORITY NOTE: Promulgated in accordance with 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:712 (June 1997), amended LR 24:1268 (July 1998), LR 25:1794 (October 1999), LR 26:2260 (October 2000), LR 27:37 (January 2001), LR 27:1222 (August 2001), LR 27:1876 (November 2001), LR 28:450 (March 2002), LR 28:777 (April 2002), LR 28:2334 (November 2002), LR 29:556 (April 2003), LR 30:786 (April 2004), LR 30:1169 (June 2004), LR 30:2302 (October 2004), LR 31:639 (March 2005), LR 32:1433 (August 2006), LR 32:2240 (December 2006), LR 33:443 (March 2007), LR 34:1885 (September 2008), LR 35:1492 (August 2009), LR 36:492 (March 2010), LR 36:2030 (September 2010), LR 38:1954 (August 2012), LR 39:

Family Impact Statement

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Small Business Statement

The proposed Rule will have no adverse impact on small businesses as described in R.S. 49:965.2 et seq.

Public Comments

Interested persons may submit written comments on the proposed changes (SG12145NI) until 4:30 p.m., May 10, 2013, to Melanie Amrhein, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: START Saving Program 2012 Interest Rate

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no estimated implementation costs or savings to state or local governmental units. This proposed change places in rule the actual earnings realized by START account owners who invested in the Louisiana Principal Protection investment option and the actual earnings realized on the investment of Earnings Enhancements. This increase in START funds belongs to the account owner (it is not state general fund money), and no expenditure of state general funds is required. The change also sets the minimum amount of interest earnings on a terminated START account that will be refunded to an account owner at ten dollars instead of the current three dollar minimum. The forfeited amount will be deposited into the Louisiana Education and Tuition Savings Fund and it is not state general fund money.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Revenue collections of state and local governments will not be affected by the proposed changes.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

These changes adopt interest rates for deposits and earnings enhancements for the year ending December 31, 2012. START account holders earned about the same as in the previous year.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no anticipated effects on competition and employment resulting from these measures.

George Badge Eldredge
General Counsel
1304#011

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Economic Development Office of Business Development

Competitive Projects Tax Exemption Program (LAC 13:I.Chapter 47)

The Department of Economic Development, Office of Business Development, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 36:104 hereby proposes to enact Sections 4701 through 4711 for the administration of the newly created Competitive Projects Tax Exemption Program as LAC 13:I.Chapter 47.

This Rule is being republished as a Notice of Intent because the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs failed to approve the rules within 60 days of publication in the Louisiana Register as required by LA R.S. 47:4351, et seq. Department of Economic Development, Office of Business Development, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 36:104 hereby proposes to enact Sections 4701 through 4711 for the administration of the newly created Competitive Projects Tax Exemption Program as LAC 13:I.Chapter 47.

Title 13

ECONOMIC DEVELOPMENT

Part I. Financial Incentive Programs

Chapter 47. Competitive Projects Tax Exemption Program

§4701. General

A. The competitive projects tax exemption program provides an ad valorem property tax exemption for the facility of an eligible business. The secretary of the department economic development ("LED") or a local governmental entity listed in R.S. 47:4353 may invite targeted non-manufacturing businesses who meet the eligibility requirements to participate in the program.

B. Only property on which ad valorem taxes have not previously been paid will be eligible for the exemption. The applicant shall provide documentation to LED that property taxes have not previously been paid on the property for which it seeks the exemption.

C. Definitions

Facility—the land, buildings, infrastructure, and equipment necessary or beneficial to the project, and any additions, expansion and improvements thereto.

Program—the competitive projects tax exemption program.

Secretary—secretary of the Louisiana Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4351, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 39:

§4703. Parish Participation in the Program

A. A contract for the program is available for projects located in parishes which have agreed to participate in the program.

B. A parish is eligible to participate in the program upon approval by all of the following local governmental entities:

1. the parish governing authority;
2. all municipalities in the parish which levy an ad valorem tax;
3. all school boards in the parish which levy an ad valorem tax;
4. the parish law enforcement district; and
5. the parish assessor.

C. The parish governing authority shall provide the secretary with written notification of the parish's agreement to participate in the program, together with copies of resolutions or other written evidence of each local governmental entity's agreement to participate.

D. Any of the entities listed in Subsection B of this Section may revoke its approval of participation in the program, by providing the secretary with written notification thereof, together with a copy of the resolution or other written evidence of the revocation action.

E. The parish will be deemed to have withdrawn from the program, effective 90 days after the secretary's receipt of written notice of revocation as provided in Subsection D of this Section. The parish's withdrawal shall not affect contracts executed prior to the effective date of the withdrawal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4351, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 39:

§4705. Eligibility Requirements; Invitation to Participate; Application

A. At the invitation of the secretary or a local governmental entity of a participating parish, a business may apply for participation in the program by submitting certified statements and substantiating documents as required by LED.

B. The secretary or a local governmental entity of a participating parish may invite a business to participate in the program, upon the secretary's determination that the business meets all of the following criteria:

1. at least 50 percent of the total annual sales of the business from its Louisiana site or sites is to out-of-state customers or buyers, or to in-state customers or buyers who resell the product or service to an out-of-state customer or buyer for ultimate use, or to the federal government, or any combination thereof;
2. the business will primarily engage in one of the following activities at the project site:
 - a. corporate headquarters;
 - b. distribution facilities;
 - c. data service centers;
 - d. research and development operations; or

e. digital media and software development centers; and

3. the business shall make capital expenditures of at least \$25,000,000 for the facility and create and maintain at least 50 new direct jobs during the contract period;

4. except for a business providing at least 50 new headquarters jobs or shared service center jobs, a business primarily engaged in the following types of businesses shall not be eligible for participation in the program:

- a. retail sales;
- b. real estate;
- c. professional services;
- d. natural resource extraction or exploration;
- e. financial services; or
- c. venture capital funds;

5. no business engaged in gaming or gambling operations shall be eligible for participation in this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4351, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Incentives Services, LR 39:

§4707. Contract Approval

A. Contract. The secretary shall determine the terms and conditions of the contract, including the term, performance obligations, monitoring by the department, reporting by the business, auditing of contract performance and the consequences of any failure to perform such obligations.

B. Approval

1. The secretary may request approval of the contract by the board of commerce and industry upon determining that:

- a. the business meets all eligibility requirements;
- b. participation in the program is needed in a highly competitive site selection situation to encourage the business to locate the project in the state; and
- c. securing the project will result in significant positive economic benefit to the state.

2. Following approval by the board of commerce and industry, the contract shall be executed by the secretary.

3. LED shall submit a copy of the executed contract to the assessor and the parish governing authority of the affected parish.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4351, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Incentives Services, LR 39:

§4709. Annual Certification of Eligibility; Suspension or Termination

A. The qualified business must submit certification (signed by a key employee of the business) that it continues to meet all eligibility requirements of the program as well as all performance obligations of the contract by April 1 of each year. A company's failure to submit the annual certification of eligibility by the deadline provided for in this section shall result in the forfeiture of benefits for the previous tax year and the secretary, in his discretion, may terminate the contract. LED may require an audit of any annual certification at the expense of the qualified business.

B. Annually, LED will verify that a participating company continues to meet the eligibility requirements of the program as well as performance obligations.

C. If a business fails to maintain the eligibility requirements for participation in the program or fails to meet the performance objectives in the contract, the secretary may, at his discretion, suspend or terminate the contract.

1. A contract suspension shall remove the exemption for the year in which the failure occurred, but the secretary may lift the suspension following a year in which eligibility requirements and performance obligations are met, and the exemption shall then be restored effective for that year.

2. A contract cancellation shall remove the exemption for the calendar year in which the failure occurred and all future years.

D. Upon receipt of notification from the secretary that a contract is suspended or cancelled, the assessor shall adjust the property assessment in the manner provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4351, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 39:

Family Impact Statement

The proposed Rule changes have no impact on family formation, stability or autonomy, as described in R.S. 49:972.

Poverty Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Public Comments

Interested persons may submit written comments to Danielle Clapinski, Department of Economic Development, P.O. Box 94185, Baton Rouge, LA 70804-9185; or physically delivered to Capitol Annex Building, Office of the Secretary, Second Floor, 1051 North Third Street, Baton Rouge, LA, 70802. Comments may also be sent by fax to (225) 342-9448, or by email to danielle.clapinski@la.gov. All comments must be received no later than 10 a.m., on May 27, 2013.

Public Hearing

A public hearing to receive comments on the Notice of Intent will be held on Monday May 27, 2013 at 10 am at Capitol Annex Building, 1045 North Third Street, Baton Rouge, LA 70802.

Anne G. Villa
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Competitive Projects Tax Exemption Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule will have minimal cost to state and local governments as a result of implementing the Competitive Projects Tax Exemption Program as enacted by Act 499 of the 2012 Regular Session of the Louisiana Legislature. LED is required by statute to make the determination of what businesses qualify for participation in the program and to monitor that businesses continue to comply with program requirements. LED intends to administer the program with existing personnel and currently available equipment and supplies and local governments are already administering a similar program, the Industrial Tax Exemption Program.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will result in an indeterminable revenue decrease for local governments. Act 499 of the 2012 legislative session creates the Competitive Projects Tax Exemption Program. This bill expands the exemption to various non-manufacturing business activities and industries (no gambling) with more than half their sales out-of-state, and any other business sector as stated in statute for projects of at least \$25 million in capital expenditures with 50 new direct jobs. All local authorities must opt into the program and may opt out of the program, but existing contracts and renewals are not affected. Contract terms are 10 years. The exemption requires the invitation of LED or impacted local authorities, project eligibility determined by LED secretary, and approval of the Board of Commerce and Industry (BC&I). The LED Secretary executes the contract on behalf of the BC&I. Local governmental units will have indeterminable revenue decreases due to the exemption of ad valorem taxes on the property of participating businesses in these same fiscal years.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The income of businesses participating in the program will increase by the amount of benefits received.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Companies receiving benefits under this program will gain competitively over companies that do not receive the program's benefits. While employment may increase in participating businesses, employment may be lessened in other competing businesses that do not participate in the program.

Anne G. Villa
Undersecretary
1304#043

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary Legal Division

Asbestos-Containing Materials in
Schools and State Buildings
(LAC 33:III.2701, 2703, 2705, 2707,
2711, 2713, 2717, 2719, 2721, 2723, 2725,
2735, 2739, 2741 and 2799) (AQ329)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.2701, 2703, 2705, 2707, 2711, 2713, 2717, 2719, 2721, 2723, 2725, 2735, 2739, 2741 and 2799 (AQ329).

LAC 33:III.Chapter 27 requires local education agencies and the state government to identify friable and nonfriable asbestos containing material (ACM) in schools and state buildings by visually inspecting schools and develop management plans to manage the asbestos. This action is required to delete unnecessary language, clarify some language in the regulations and make necessary changes in order to help implement the programs. The basis and rationale for this Rule revision is to clarify language adopted from the federal regulations to ensure that the regulated community understands the requirements to protect public

health when disturbing asbestos-containing materials. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33
ENVIRONMENTAL QUALITY**

Part III. Air

Chapter 27. Asbestos-Containing Materials (ACM) in Schools and State Buildings

§2701. Asbestos-Containing Materials (ACM) in Schools and State Buildings

A. - B.1. . . .

2. Except for the requirement to submit Form AAC-8 pursuant to LAC 33:III.2723.A, state buildings built after 1978 are exempt from the requirements of this Chapter if:

a. the state building is not used as a school building for the education of grades kindergarten through post-graduate; or

b. the state building does not contain asbestos as determined through review and approval of the Office of Environmental Services prior to occupancy of the building by:

i. a signed *statement(s) of no asbestos in construction* as defined in LAC 33:III.2703.A that addresses the entire building, and all additions and renovations; or

ii. an inspection report submitted in accordance with LAC 33:III.2707 as a result of an inspection stating that no asbestos is contained in, or on the outside of the state building, together with signed statement(s) of no asbestos in construction that address all additions and renovations conducted after the inspection; and

c. a copy of the department approval of any documents submitted pursuant to Subparagraph B.2.a. of this Subsection shall be maintained at the administrative office of the building.

3. Except for the requirement to submit Form AAC-8 pursuant to LAC 33:III.2723.A, state buildings built prior to 1979 are exempt from the requirements of this Chapter provided that:

a. the building is not used as a school building for the education of grades kindergarten through post-graduate;

b. prior to occupancy, the department reviews and approves documentation of one of the following:

i. the complete renovation of the state building after January 1, 1979 that complied with the following:

(a). an inspection conducted during the renovation that showed that all ACM was removed from the inside and the outside of the building; and

(b). no asbestos containing material was added in the renovations as documented by signed statement(s) of no asbestos in construction; or

ii. an inspection conducted in accordance with LAC 33:III.2707.A reveals that no asbestos is contained in or on the outside of the state building; and

c. no asbestos containing materials were added to the building subsequent to the inspection conducted pursuant to Clause B.3.b.i of this Section or the renovation conducted in accordance with Clause B.3.b.ii of this Section as documented by signed statement(s) of no asbestos in construction;

d. a copy of the documentation submitted pursuant to Subparagraphs B.3.b and c of this Section shall be submitted to the Office of Environmental Services; and

e. a copy of the documentation submitted pursuant to Subparagraphs B.3.b and c of this Section and department approval shall be maintained at the building administrative office.

C. Scope

1. This regulation requires local education agencies and the state government to identify friable and nonfriable ACM in schools and state buildings by visually inspecting schools and state buildings for such materials, sampling such materials if they are not assumed to be ACM, and having samples analyzed by appropriate techniques referred to in this Rule. The regulation requires local education agencies and the state government to submit management plans to the Office of Environmental Services at least 30 days prior to occupancy of any school or state building, and implement the plan within 180 days after occupancy.

2. If an exemption is requested for a state building that contains no asbestos, a determination supporting that exemption shall be submitted in accordance with Subparagraph B.2.b or 3.b of this Section.

3. Management plans submitted to and approved by the Department of Environmental Quality shall meet the inspection and assessment requirements of this Chapter.

4. In addition, local education agencies and the state government are required to employ persons who have been accredited to conduct inspections, reinspections, develop management plans, or perform response actions including the design of those actions.

5. The regulation also includes recordkeeping requirements.

6. Local education agencies and the state government may contractually delegate their duties under this Rule, but they remain responsible for the proper performance of those duties.

7. Local education agencies and the state government are encouraged to consult with the Office of Environmental Compliance of the Department of Environmental Quality for assistance in complying with this Rule.

8. Local education agencies and the state government shall provide for the transportation and disposal of asbestos in accordance with provisions of LAC 33:III.Chapter 51.Subchapter M.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended LR 16:1056 (December 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), LR 22:698 (August 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2456 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2443 (October 2005), LR 33:2089 (October 2007), amended by the Office of the Secretary, Legal Division, LR 39:

§2703. Definitions

A. The terms used in this Chapter are defined in LAC 33:III.111 and LAC 33:III.5151.B of these regulations with the exception of those terms specifically defined in this Section as follows.

Accredited or Accreditation—when referring to a person, *accreditation* by the Department of Environmental Quality under the provisions of LAC 33:III.2799 and when referring to a laboratory, *accreditation* under the provisions of LAC 33:I.Subpart 3.Chapters 45-59.

Asbestos-Containing Material (ACM)—when referring to schools or state buildings, any material or product which contains more than 1 percent asbestos. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), the asbestos content may be verified by point counting using PLM, or an equivalent EPA approved estimation technique, or assume the amount to be greater than 1 percent and treat the material as ACM.

Damaged Floor Covering that Contains ACM—resilient floor covering or the mastic used to attach it to the floor surface that contains ACM which has deteriorated or sustained physical impact such that the internal structure (cohesion) of the material is inadequate or, if applicable, which has delaminated such that its bond to the substrate (adhesion) is inadequate or which for any other reason lacks fiber cohesion or adhesion qualities. Such damage or deterioration may be illustrated by the separation of ACM into layers; separation of ACM from the substrate; flaking, blistering or crumbling of the ACM surface; water damage; significant or repeated water stains; scrapes, gouges, or mars; or other signs of physical impact on the ACM. Asbestos debris originating from the ACBM in question may also indicate damage.

Facility Component—any part of a facility, including equipment, that is under the control of a local education agency or the state.

Guest Instructor—an individual with expertise in a specific non-asbestos field who is designated by the RATP or principal trainer to provide instruction specific to certain course topics (i.e., law, medicine, etc.).

Inspection—any activity undertaken in a school building, or a state building, to determine the presence or location, or to assess the condition of friable or nonfriable asbestos-containing material (ACM), whether by visual or physical examination, or by collecting samples of such material. This term includes reinspections of friable and nonfriable known or assumed ACM which has been previously identified. The term does not include the following:

a. - b. ...

c. visual inspections of the type described in LAC 33:III.2717.J solely for the purpose of determining completion of response actions.

Local Education Agency—

a. a public board of education or other authority legally constituted within Louisiana for either administrative control or direction of, or to perform a service function for, public or private; profit or nonprofit; day, night, or residential schools; elementary or secondary schools,

colleges, graduate, medical, dental, or post-graduate education institutions;

b. the governing authority of any elementary or secondary school, college, or post-graduate education institution.

Operations and Maintenance Program (O and M)—a program of work practices to maintain regulated ACM in good condition, ensure cleanup of asbestos fibers previously released, and prevent further release by minimizing and controlling disturbance or damage of regulated ACM.

Principal Trainer—the trainers recognized by the department and identified by the RATP in its application for recognition to provide instruction in asbestos training courses (e.g., inspector, etc.).

Recognized Asbestos Training Provider (RATP)—a person or organization recognized by the department, to provide training in asbestos activities in Louisiana.

Regulated Asbestos-Containing Material (RACM)—

a. friable asbestos material, including damaged or significantly damaged friable surfacing or miscellaneous ACM;

b. category I and II nonfriable ACM that has become friable;

c. category I and II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, grinded, sanded, cut, abraded, or reduced to powder by the forces that have acted or are expected to act on the material in the course of demolition or renovation operations;

d. resilient floor covering or the mastic used to attach it to the floor surface that is scraped, sanded, abraded, bead blasted, cut, ground, crumbled, pulverized, or reduced to powder by any means, including hand and mechanical equipment. This definition does not include resilient floor covering removed by using dry ice, heat, wet methods, and chemicals where the tiles or sheeting are removed intact (minor tears or minor breakage is acceptable where, for all intents and purposes, the flooring is considered whole); and

e. damaged or significantly damaged thermal system insulation ACM.

Related Scientific Field—animal science, biological sciences, chemistry, geosciences, atmospheric sciences, soil sciences, physical geography, physics, health sciences, toxicology, environmental sciences, wildlife and fisheries sciences, engineering, nuclear science, agronomy, forestry, health physics, medical physics, or statistics and quantitative methods.

Response Action—a method, including removal, encapsulation, enclosure, repair, operations, and maintenance, that protects human health and the environment from regulated ACM.

Responsible Official—

a. for a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation,

b. for a partnership or sole proprietorship: a general partner or the proprietor, respectively. If a general partner is a corporation, the provisions of Subparagraph a of this definition apply; or

c. for a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this definition, a principal executive officer of a federal agency includes the chief executive officer having a responsibility for the overall operations of a principal geographic unit of the agency.

* * *

School—any profit or nonprofit; public or private; day, night, or residential school that provides elementary, including Head Start and pre-K programs located on elementary school campuses, secondary, college, graduate, medical, dental, or post-graduate education, as determined under state law, or any school of any agency of the United States. Schools do not include locations where the primary purpose is not the education of students, but that provide for internships or other on the job training.

School Building—

a. - e. ...

f. any exterior structure, portico or covered exterior hallway or walkway and any exterior portion of a mechanical system used to condition interior space.

Significantly Damaged Floor Covering that Contains ACM—damaged floor covering that contains ACM where the damage is extensive and severe.

* * *

Small-Scale, Short-Duration Activities (SSSD)—tasks that disturb less than or equal to 3 square feet or 3 linear feet of pipe ACM.

State Building—a building, or portion thereof, owned, used, or leased by the state of Louisiana. If the state does not own, lease, occupy, or use the entire building, the *state building* shall be only:

a. that portion of the building, owned, leased, occupied, or used by the state;

b. facility components as defined in LAC 33:III.2703;

c. work areas, kitchens, restrooms, and other common areas that are co-owned, leased, or used by the state together with others; and

d. any other portion of the building that shares a common heating, ventilation, and air conditioning (HVAC) system or common ingress/egress points with that portion of the building owned, leased, occupied or used by the state.

State Government—the state of Louisiana and any state agency as defined in R.S. 13:5102 that owns, leases, occupies, or uses the state building.

State of Louisiana or State—the state of Louisiana or any state agency as defined in R.S. 13:5102.

Statement(s) of No Asbestos in Construction—

a. a signed written statement, by an architect, project engineer, or other principal responsible for the construction or renovation of the building, or a portion thereof, that no ACM was specified as a building material in the applicable construction documents for the building, or portion thereof (multiple signatures may be necessary to address the entire building); or

b. a signed written statement by an accredited asbestos inspector who has conducted a thorough review of

documents related to the construction or renovation of the building that no ACM was specified as a building material in the construction documents for the building, including all subsequent additions or renovations.

* * *

Training Hour—at least 50 minutes of actual teaching including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and/or hands-on experience.

Training Manager—the individual responsible for administering a training program and monitoring the performance of the principal trainers and guest instructors; either serves as the signatory for training certificates or may designate other responsible individuals in the organization, or trainers as signatories.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), LR 22:699 (August 1996), amended by the Office of the Secretary, Legal Division, LR 39:

§2705. General Local Education Agency, State, or Local Government Responsibilities

A. - A.7. ...

8. ensure that the person designated under Paragraph A.7 of this Section receives training from an asbestos trainer recognized by the department, or other instructor qualified to provide training to perform duties assigned under this Section. Such training shall provide, as necessary, basic knowledge of:

8.a. - 9. ...

B. The requirements of this Chapter in no way supersede the worker protection and work practice requirements under 29 CFR 1910.1001 (Occupational Safety and Health Administration [OSHA] asbestos worker protection standards for general industry), 1926.1101 (OSHA asbestos worker protection standards for construction), 40 CFR Part 763, Subpart G (EPA asbestos worker protection standards for public employees), LAC 33:III.2799.Appendix A, and LAC 33:III.Chapter 51.Subchapter M.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), amended by the Office of the Secretary, Legal Division, LR 39:

§2707. Inspection and Reinspections

A. Inspection

1. Except as provided in LAC 33:III.2701.B.2 and 3, and LAC 33:III.2735, each local education agency and the state government shall inspect each school or state building that they lease, own, occupy, or use to identify all locations of friable and nonfriable ACBM as specified in this Section and LAC 33:III.2701.C.1.

2. Any building leased or acquired that is to be used as a school or state building shall be inspected as described under Paragraphs A.3, 4, and 5 of this Section prior to use as a school or state building.

3. In the event that emergency use of an uninspected building as a school or state building is necessitated, such buildings shall be inspected within 30 days after the decision to use them.

4. Each inspection shall be made by an accredited inspector.

5. For each area of a school or state building, except as excluded under LAC 33:III.2735, each person performing an inspection shall:

a. visually inspect the area to identify the locations of all suspected ACM;

b. touch all suspected ACM to determine whether it is friable;

c. identify all homogeneous areas of friable suspected ACM and all homogeneous areas of nonfriable suspected ACM;

d. assume that some or all of the homogeneous areas are ACM, and for each homogeneous area that is not assumed to be ACM, collect and submit for analysis bulk samples under LAC 33:III.2709 and 2711;

e. assess, under LAC 33:III.2713, friable material in areas where samples are collected, friable material in areas that are assumed to be ACM, and friable ACM identified during a previous inspection; and

f. prepare a report that includes the necessary information and submit to the person designated under LAC 33:III.2705 a copy of such report for inclusion in the management plan within 30 days of the inspection. The report shall include:

i. the date of the inspection signed by each accredited person making the inspection, and a copy of each inspector's accreditation certificate current at the time of inspection;

ii. an inventory of the locations of the homogeneous areas where samples were collected, exact locations where each bulk sample is collected, dates that samples are collected, homogeneous areas where friable suspected ACBM is assumed to be ACM, and homogeneous areas where nonfriable suspected ACBM is assumed to be ACM;

iii. a description of the manner used to determine sampling locations, and the name and signature of each accredited inspector who collected the samples and a copy of the inspector's accreditation certificate current at the time of inspection;

iv. a list of whether the homogeneous areas identified under Subparagraph A.5.d of this Section are surfacing material, thermal system insulation, or miscellaneous material; and

v. assessments made of friable material pursuant to Subparagraph A.5.e of this Section, the names and signatures of all accredited inspectors making the assessment, and a copy of the inspector's accreditation certificate current at the time of inspection.

B. Reinspection

1. At least once every three years after a management plan is in effect, each local education agency shall conduct a reinspection of all friable and nonfriable known or assumed ACBM in each school building that they lease, own, or use for head start, pre-K programs, elementary, or secondary education.

1.a. - 3.g. ...

h. record the following and submit to the person designated under LAC 33:III.2705 a copy of such record for inclusion in the management plan within 30 days of the reinspection:

i. the date of the reinspection, the name and signature of the person making the reinspection, a copy of his or her accreditation certificate current at the time of the reinspection, and any changes in the condition of known or assumed ACBM;

ii. the exact locations where samples are collected during the reinspection, a description of the manner used to choose sampling locations, the name and signature of each accredited inspector who collected the samples, a copy of the accreditation certificate current at the time of the reinspection; and

iii. any assessments or reassessments made of friable material, the name and signature of the accredited inspector making the assessments, and a copy of accreditation certificate current at the time of assessment or reassessment.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), LR 22:699 (August 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:1222 (August 2001), amended by the Office of the Secretary, Legal Division, LR 39:

§2711. Analysis

A. Local education agencies and the state government shall have bulk samples, collected under LAC 33:III.2709, and air samples collected under LAC 33:III.2717, and submitted for analysis, analyzed for asbestos using laboratories accredited under the provisions of LAC 33:I.Subpart 3.Chapters 45-59.

B. Bulk samples shall not be composited for analysis and shall be analyzed for asbestos content by polarized light microscopy (PLM), using the "Interim Method for the Determination of Asbestos in Bulk Insulation Samples," found at 40 CFR Part 763 Subpart E, Appendix E.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), repromulgated by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), amended LR 22:699 (August 1996), amended by the Office of the Secretary, Legal Division, LR 39:

§2713. Assessment

A. The local education agency or state government shall have an accredited inspector provide the following.

1. ...

2. Each accredited inspector providing a written assessment shall sign and date the assessment, include a copy of his or her accreditation certificate current at the time of assessment and submit a copy of the assessment to the person designated under LAC 33:III.2705 for inclusion in the management plan within 30 days of the assessment.

B. - C.6. ...

D. The local education agency or the state government shall select a person accredited to develop management plans to review the results of each inspection, reinspection, and assessment for the school or state building and to conduct any other necessary activities in order to recommend in writing to the local education agency or the state government appropriate response actions. The accredited person shall sign and date the recommendation, provide a copy of his or her accreditation certificate current at the time of management plan development or other action, and submit a copy of the recommendation to the person designated under LAC 33:III.2705.A.7.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), amended by the Office of the Secretary, Legal Division, LR 39:

§2717. Response Actions

A. The local education agency or the state government shall select and implement in a timely manner the appropriate response actions in this Section consistent with the assessment conducted in LAC 33:III.2713. The response actions selected shall be sufficient to protect human health and the environment. The local education agency or the state government may then select, from the response actions which protect human health and the environment, that action which is the least burdensome method. Nothing in this Section shall be construed to prohibit removal of ACBM from a school or state building at any time, should removal be the preferred response action of the local education agency or the state government. If any damaged or significantly damaged thermal system insulation, friable surfacing ACM or miscellaneous ACM is present, the local education agency or the state government shall:

1. immediately isolate the area with the damaged or significantly damaged thermal system insulation, and restrict access to protect human health and the environment until the response action is completed; and

2. perform any response actions in accordance with appropriate requirements as provided in LAC 33:III.5151.

B. If damaged or significantly damaged thermal system insulation ACM is present in a building, the local education agency or the state government shall:

1. repair the damaged area;
2. remove the damaged material if it is not feasible, due to technological factors, to repair the damage; and
3. maintain all thermal system insulation ACM and its covering in an intact state and undamaged condition.

C. Selection of Response Action for Damaged ACM

1. If damaged friable surfacing ACM or damaged friable miscellaneous ACM or damaged floor covering that contains ACM is present in a school or state building, the local education agency, or the state government shall select from among the following response actions: encapsulation, enclosure, removal, or repair of the damaged material.

2. In selecting the response action from among those that meet the definition in LAC 33:III.2703 and, the local education agency or the state government shall determine which of these response actions protects human health and

the environment. For purposes of determining which of these response actions are the least burdensome, the local education agency or the state government may then consider local circumstances, including occupancy and use patterns within the school or state building, and its economic concerns, including short- and long-term costs.

D. Selection of Response Action for Significantly Damaged ACM

1. If significantly damaged friable surfacing ACM or significantly damaged friable miscellaneous ACM or significantly damaged floor coverings as defined in LAC 33:III.2703.A that contain ACM is present in a school or state building, the local education agency or the state government shall remove the material in the functional space, or depending upon whether enclosure or encapsulation would be sufficient to protect human health and the environment, enclose or encapsulate.

E. If any friable surfacing ACM, thermal system insulation ACM friable miscellaneous ACM, or floor coverings that contain ACM that has potential for damage is present in a building, the local education agency or the state government shall at least implement an operations and maintenance (O and M) program, as described under LAC 33:III.2719.

F. If any friable surfacing ACM, thermal system insulation ACM, friable miscellaneous ACM, or any floor covering that contains ACM that has potential for significant damage is present in a building, the local education agency or the state government shall:

1. - 3. ...

G. A response action related to removal of floor coverings that contain ACM in a school or state building shall follow the requirements of this Section and those requirements related to renovations in LAC 33:III.5151.F. and J.

H. Response actions including removal, encapsulation, enclosure, or repair, other than SSSD repairs, shall be designed and conducted by persons accredited to design and conduct response actions.

I. Local education agencies and the state government shall comply with either the OSHA Asbestos Worker Protection for General Industry at 29 CFR 1910.1001 or the Asbestos Construction Standard at 29 CFR 1926.1101, whichever is applicable.

J. Completion of Response Actions

1. At the conclusion of any action to remove, encapsulate, or enclose ACBM or material assumed to be ACBM, a person designated by the local education agency or the state government, shall visually inspect each functional space where such action was conducted to determine whether the action has been properly completed.

2. The following requirements apply to collection and analysis of air samples.

- a. A person designated by the local education agency or the state government shall collect air samples using aggressive sampling as described in EPA regulations contained in 40 CFR Part 763, Subpart E, Appendix A to monitor air for clearance after each removal, encapsulation, and enclosure project involving ACBM, except for SSSD projects.

- b. Local education agencies and the state government shall have air samples collected under this

Section analyzed for asbestos using laboratories accredited by the Department of Environmental Quality according to LAC 33:I.Subpart 3.Chapters 45-59, to conduct such analysis using phase contrast microscopy (PCM) and transmission electron microscopy (TEM) equipped with an energy dispersive x-ray analysis system or, under circumstances permitted in this Section.

3. Except as provided in Paragraph J.4, 5, or 7 of this Section, an action to remove, encapsulate, or enclose ACBM shall be considered complete when the average concentration of asbestos of five air samples collected within the affected functional space and analyzed by the TEM method contained in EPA regulations 40 CFR Part 763, Subpart E, Appendix A is not statistically significantly different, as determined by the Z-test calculation found in EPA regulations 40 CFR Part 763, Subpart E, Appendix A from the average asbestos concentration of five air samples collected at the same time outside the affected functional space and analyzed in the same manner, and the average asbestos concentration of the three field blanks described in EPA regulations, 40 CFR Part 763, Subpart E, Appendix A is below the filter background level of 70 structures per square millimeter (70 s/mm^2).

4. An action may also be considered complete if the volume of air drawn for each of the five samples collected within the affected functional space is equal to or greater than 1,199 L of air for a 25-mm filter or equal to or greater than 2,799 L of air for a 37-mm filter, and the average concentration of asbestos as analyzed by the TEM method in EPA regulations, 40 CFR Part 763, Subpart E, Appendix A for the five air samples does not exceed the filter background level of 70 structures per square millimeter (70 s/mm^2). If the average concentration of asbestos of the five air samples within the affected functional space exceeds 70 s/mm^2 , or if the volume of air in each of the samples is less than 1,199 L of air for a 25-mm filter or less than 2,799 L of air for a 37-mm filter, the action shall be considered complete only when the requirements of Paragraph J.3 or 5 of this Section are met.

5. At any time, a local education agency or the state government may analyze air monitoring samples collected for clearance purposes by phase contrast microscopy (PCM) to confirm completion of removal, encapsulation, or enclosure of ACBM that is greater than SSSD and less than or equal to 160 square feet or 260 linear feet. The action shall be considered complete when the results of samples collected in the affected functional space and analyzed by PCM using the National Institute for Occupational Safety and Health (NIOSH) Method 7400 entitled "Fibers" published in the NIOSH Manual of Analytical Methods, 3rd Edition, Second Supplement, August 1987, show that the concentration of fibers for each of the five samples is less than or equal to a limit of quantitation for PCM ($0.01 \text{ fibers per cubic centimeter [} 0.01 \text{ f/cm}^3 \text{] of air}$). A description of the method is available at the Office of the Federal Register Information Center. The method is incorporated as it exists on the effective date of this Rule, and a notice of any change to the method will be published in the *Louisiana Register*.

6. To determine the amount of ACM affected under Paragraph J.5 of this Section, the local education agency or

the state government shall add the total square or linear footage of ACM within the containment barriers used to isolate the functional space for the action to remove, encapsulate, or enclose the ACM. Contiguous portions of material subject to such action conducted concurrently or at approximately the same time within the same school or state building shall not be separated to qualify under Paragraph J.5 of this Section.

7. In the case of a demolition of a school or state building where occupants will not reenter the building, clearance sampling is not required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), LR 22:699 (August 1996), amended by the Office of the Secretary, Legal Division, LR 39:

§2719. Operations and Maintenance

A. Applicability. The local education agency or the state government shall implement and maintain an operations, maintenance, and repair (O and M) program under this Section whenever any friable ACM is present or assumed to be present in a building that it leases, owns, or otherwise uses as a school or state building. Any material identified as nonfriable ACM or nonfriable assumed ACM shall be treated as friable ACM for the purposes of this Section when the material is about to become friable as a result of activities performed in the school or state building.

B. Worker Protection. Local education agencies and the state government shall comply with either the OSHA asbestos worker protection for general industry at 29 CFR 1910.1001 or the asbestos construction standard at 29 CFR 1926.1101, whichever is applicable. Local education agencies and the state government may consult EPA regulations contained in 40 CFR 763, Subpart E if their employees are performing small-scale operations, maintenance, and repair activities of short-duration.

C. - D.5. ...

6. Place the asbestos debris and other cleaning materials in sealed, clear, leak-tight containers properly labeled as may be required by LAC 33:III.5151.F.

E. ...

F. Fiber Release Episodes

1. - 1.b....

c. Place the asbestos debris in a sealed, leak-tight container properly labeled as may be required by LAC 33:III.5151.F.

1.d. - 2.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), LR 22:699 (August 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2456 (November 2000), LR 30:1672 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2444 (October 2005), LR 33:2090 (October 2007), amended by the Office of the Secretary, Legal Division, LR 39:

§2721. Training and Periodic Surveillance

A. - A.2.b. ...

c. the provisions of this Section and LAC 33:III.2717, LAC 33:III.2799.Appendix A, regulations contained in LAC 33:III.Chapter 51.Subchapter M, EPA regulations contained in 40 CFR 763, Subpart G, and OSHA regulations contained in 29 CFR 1926.1101; and

2.d. - 4. ...

B. Periodic Surveillance

1. At least once every six months after a management plan is in effect, each local education agency or the state government shall conduct periodic surveillance in each building that it leases, owns, or uses as a school or state building that contains ACBM or is assumed to contain ACBM.

2. - 2.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:1222 (August 2001), amended by the Office of the Secretary, Legal Division, LR 39:

§2723. Management Plans

A. Local education agencies or the state government shall submit Form AAC-8 concerning management plans for the following buildings. Local education agencies and the state government are exempt from the requirement to develop and submit a management plan in connection with Form AAC-8 if there has been a determination that there is no asbestos present in the building in accordance with LAC 33:III.2735.A.3, 4, 6, and 7.

1. Each local education agency or the state government shall develop an asbestos management plan for each school, including all buildings that are leased, owned, or used as school or state buildings, and submit the plan to the Office of Environmental Services. After June 20, 1994, the original submittal of each plan shall be submitted at least 30 days prior to its use as a school or state building using the Form AAC-8, required elements for asbestos management plans (latest revised form can be obtained from the Office of Environmental Services or through the department's website. The plan may be submitted in stages, if applicable that cover portions of the school or state building under the authority of the local education agency or the state government as specified in LAC 33:III.2701.C.1.

2. If a building to be used as part of a school or is leased or acquired, the local education agency shall include the additional building in the management plan for the school prior to its use as a school. The revised portions of the management plan shall be submitted to the Office of Environmental Services.

3. If a local education agency or the state government begins to use a building as a school or state building more than 90 days after promulgation of this regulation, the local education agency or the state government shall submit a management plan for the school or state building to the Office of Environmental Services prior to its use as a school or state building. Each plan developed or modified after June

20, 1994, shall include Form AAC-8, required elements for management plans.

B. Each local education agency or the state government shall implement its management plan within 180 days after occupancy.

C. Each local education agency or the state government shall maintain and update its management plan to keep it current with ongoing operations and maintenance, periodic surveillance, inspection, reinspection, and response action activities. All provisions required to be included in the management plan under this Section shall be retained as part of the management plan (by either hard copy, or as an electronic file), as well as any information that has been revised to bring the plan up-to-date.

D. The management plan shall be developed by a management planner accredited by the department at the time the work was performed, and shall include the following.

1. - 2.e. ...

3. The following shall be included for each inspection and reinspection conducted under LAC 33:III.2707:

a. the date of the inspection or reinspection, the name and signature, and a copy of the accreditation certificate current at the time of inspection of each accredited inspector performing the inspection or reinspection;

b. ...

c. a description of the manner used to determine sampling locations, and the name and signature of each accredited inspector collecting samples, and a copy of the accreditation certificate current at the time of inspection;

d. a copy of the analyses of any bulk samples collected and analyzed, the name and address of any laboratory that analyzed bulk samples, a statement that the laboratory meets the applicable requirements of LAC 33:III.2711.A, the date of analysis, the name and signature of the person performing the analysis, and a copy of the laboratory accreditation certificate; and

e. a description of assessments, required under LAC 33:III.2713, of all ACBM and suspected ACBM assumed to be ACM, and the name, signature, and a copy of the accreditation certificate current at the time of inspection of each accredited person making the assessments.

4. The name, address, and telephone number of the person designated under LAC 33:III.2705 to ensure that the duties of the local education agency are carried out, the identity and qualifications of the person providing the training to the person designated, a description of and documentation of the training provided, and dates and training hours taken by that person to carry out the duties shall be included.

5. The recommendations made to the local education agency regarding response actions under LAC 33:III.2713.D, and the name, and signature of each person making the recommendations, and a copy of the accreditation certificate current at the time shall be included.

6. ...

7. With respect to the person or persons who inspected for ACBM and who will design or carry out response actions, except for operations and maintenance, with respect to the ACBM, a statement that the person(s) is accredited under the provisions in LAC 33:III.2799.Appendix A and a

copy of the accreditation certificate current at the time shall be included.

8. A detailed description in the form of a blueprint, diagram, or in writing of any ACBM or suspected ACBM assumed to be ACM that remains in the school or state building once response actions are undertaken pursuant to LAC 33:III.2717 shall be included. This description shall be updated as response actions are completed.

D.9. - F.3. ...

4. Upon submission of its management plan and at least once each year, the local education agency or the state government shall provide notice to parents, teachers, and employees of the availability of management plans by one or more of the following: letter, e-mail, text message, or website post. The management plan shall include a description of the steps taken to provide notice and a dated copy of the notification.

G. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), LR 22:700 (August 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2457 (November 2000), amended by the Office of Environmental Assessment, LR 30:2021 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2444 (October 2005), LR 33:2090 (October 2007), amended by the Office of the Secretary, Legal Division, LR 39:

§2725. Recordkeeping

A. Records required under this Section shall be maintained in a centralized location in the administrative office of the school, state building, local education agency, or state government as part of the management plan. The records may be kept in hard copy or electronic format providing all necessary information and documentation (e.g., signature) is included. For each homogeneous area where all ACBM has been removed, the local education agency or the state government shall ensure that such records are retained for three years after the next reinspection required under LAC 33:III.2707.B.1, or for an equivalent period.

B. For each preventive measure and response action taken for friable and nonfriable ACBM and friable and nonfriable suspected ACBM assumed to be ACM, the local education agency or the state government shall provide:

1. a detailed written description of the measure or action, including methods used, the location where the measure or action was taken, reasons for selecting the measure or action, start and completion dates of the work, names and addresses of all contractors involved, accreditation numbers of contractors at the time of the action, and if ACBM is removed, the name and location of the storage or disposal site of the ACM; and

2. the name and signature of any person collecting any air sample required to be collected at the completion of certain response actions specified by LAC 33:III.2717.J, the locations where samples were collected, date of collection, the name and address of the laboratory analyzing the samples, the date of analysis, the results of the analysis, the method of analysis, the name and signature of the person performing the analysis, and a statement that the laboratory

meets the applicable requirements of LAC 33:III.2717.J.2.b, and a copy of the laboratory accreditation certificate.

C. - H. ...

I. For the person designated under LAC 33:III.2705.A.7, the local education agency or state government shall provide the person's name, job title, the date training was received, the name and qualifications of the person providing the training to the designated person, a description and documentation of the training provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), amended by the Office of the Secretary, Legal Division, LR 39:

§2735. Exclusions

A. - A.6. ...

7. An architect or project engineer responsible for the construction of a new school building built after October 12, 1988, or an accredited inspector signs a statement that no ACBM was specified as a building material in any construction document for the building or, to the best of his or her knowledge, no ACBM was used as a building material in the building. The local education agency shall submit a copy of the signed statement of the architect, project engineer, or accredited inspector to the Office of Environmental Services and shall complete applicable portions of Form AAC-8 (pages 1, 4, and 5) to serve as that portion of the management plan for that school.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), LR 22:700 (August 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2457 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2444 (October 2005), LR 33:2090 (October 2007), amended by the Office of the Secretary, Legal Division, LR 39:

§2739. Agent Accreditation

A. - B.2. ...

3. Workers who are engaged in maintenance that disturbs more than 3 square or linear feet of ACBM which does involve its actual removal, enclosure, repair, or encapsulation shall receive their initial and refresher training from a training provider recognized by the Department of Environmental Quality. This training shall be in accordance with the asbestos abatement worker course as described in LAC 33:III.2799.Appendix A, Paragraph B.5, Initial Training and Subsection D, Refresher Training Courses. Workers who participate in the type of project described in this Paragraph shall be accredited in accordance with LAC 33:III.2799.Appendix A and shall work under the close direction of an accredited supervisor during any work they perform.

4. Supervisors who are directing workers who may disturb ACM shall receive their initial and refresher training in accordance with LAC 33:III.2799.Appendix A, Paragraph B.4, and Subsection D, Refresher Training Courses from a

training provider recognized by the Department of Environmental Quality. Supervisors who participate in the type of project referenced in this Paragraph are responsible for ensuring that:

4.a. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended LR 16:397 (May 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), LR 22:700 (August 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2457 (November 2000), amended by the Office of the Secretary, Legal Division, LR 39:

§2741. Recognized Asbestos Training Providers (RATP) and Principal Trainers

A. The *recognized asbestos training providers (RATP)* as defined in LAC 33:III.2703.A and its principal trainers shall comply with and direct others to comply with LAC 33:III.Chapters 27 and 51, and other applicable federal, state, and local regulations.

B. Asbestos Training Course Requirements. The courses conducted by the RATP and its principal trainers shall meet the following requirements.

1. Training courses shall:

a. meet the requirements of LAC 33:III.2799. Appendix A and TSCA Title II; and

b. be directed to the training materials and be conducted in a professional manner.

2. Initial training courses shall:

a. include a minimum of two training hours of instruction as provided in LAC 33:III.Chapters 27 and 51; and

b. be taught according to the criteria and length of time as specified in LAC 33:III.2799. Appendix A. Subsection A.

3. Refresher training courses shall be taught according to the criteria and length of time as specified in LAC 33:III.2799. Appendix D.

4. Principal Trainers. The principal trainer shall not be a student in the course.

5. Training in a Foreign Language

a. The training materials used shall be written in the language used for teaching the class.

b. The principal trainer shall be fluent in the language in which the class is being taught to the students.

c. Each student taking the class shall be fluent in the language used by the principal trainer.

6. Training Facility. The instruction room shall be housed in a commercial or industrial type setting.

a. The room shall be set up in classroom style setting with an instruction board for the principal trainer to write on, seats, and flat writing surfaces for the students.

b. The size of the room shall be adequate for instruction, including presentation equipment and hands on training.

7. The principal trainers may utilize guest instructors.

8. Training Materials

a. Audio-visual methods, such as the use of overheads, slides, and projectors may be used as supplemental training materials.

b. The training materials shall be applicable to the class being taught and include the latest version of the course materials submitted to the department with the initial or renewal application.

c. The training materials shall include the most current versions of the DEQ forms posted on the department's website.

9. Each student shall be provided with a face photo to attach to his or her application for accreditation.

10. Training Audits

a. Training course providers and principal trainers shall permit representatives of EPA or the department to attend, evaluate, and monitor any training course without charge.

b. Unannounced audits may be conducted by the department to ensure compliance with federal and state requirements for specific training courses.

C. Training Completion Certificates

1. Unique sequentially-numbered certificates shall be issued to students who successfully pass the training course. The certificate shall include:

a. student's name;

b. form of photo identification and associated number, (e.g., driver's license or state identification card);

c. the course completed and whether it is initial or refresher training;

d. dates of the training course and the examination;

e. expiration date for training that is one year after the date on which the student completed the course,

f. language in which the course was taught;

g. original signature of the principal trainer(s);

h. the name, address, and telephone number of the RATP;

i. the discipline for which training was received; and

j. a statement that the person receiving the certificate has completed the requisite training for asbestos accreditation as required under this LAC 33:III.2799. Appendix A and the TSCA Title II.

2. RATP who provide refresher training shall provide training completion certificates in accordance with Subparagraph C.1.a-j of this Section, except the examination date may be omitted.

D. Recordkeeping Requirements of RATP. All RATP shall comply with the following minimum recordkeeping requirements.

1. Training Course Materials. A RATP shall retain copies of all instructional materials used in the delivery of the classroom training such as student manuals, principal trainer notebooks, and handouts.

2. Principal Trainer Qualifications. A RATP shall retain copies of all principal trainers' résumés, and the documents approving each principal trainer issued by the department in advance whenever it changes course principal trainers. Records shall accurately identify the principal trainers who taught each particular training course for each date that a course is offered.

3. Examinations. A RATP shall document that each person who receives an accreditation certificate for an initial training course has achieved a passing score on the examination. These records shall clearly indicate the date upon which the exam was administered, the training course

and discipline for which the exam was given, the name of the person who proctored the exam, a copy of the exam, and the name and test score of each person taking the exam. The topic and dates of the training course shall correspond to those listed on that person's accreditation certificate.

4. Training Certificates. The RATPs shall maintain records that document the names of all persons who have been awarded certificates, their certificate numbers, the disciplines for which accreditation was conferred, training and expiration dates, and the training location. The RATP shall maintain the records in a manner that allows verification by telephone of the required information.

5. The RATP shall maintain all required records for a minimum of three years. The RATP, however, may retain these records for a longer period of time.

6. The RATP shall allow reasonable access to all of the records required by LAC 33:III.2799. Appendix A, and to any other records which may be required for the approval of asbestos RATPs or the accreditation of asbestos training courses to both EPA and to state agencies on request.

7. If a RATP ceases to conduct training, the RATP shall notify DEQ and give the department the opportunity to take possession of the provider's asbestos training records.

E. RATP Notifications

1. The RATP shall notify the Office of Environmental Services of any change in status of the training organization, (e.g., pending fines, notices of violation, changes in principal trainer status, etc.).

2. The RATP shall notify the Office of Environmental Services of the courses that will be taught, including where, when, and who will conduct the class.

a. The course notification shall include the address of all of the physical locations where the training will be held and the dates for each location.

b. The course notification form shall include the name of each principal trainer for each training course.

c. The course notification shall be received in writing, fax, via email, or other methods of submittal approved by the Office of Environmental Services at least five working days prior to class commencement, or one working day prior to class commencement, if only the Louisiana regulations course will be taught.

3. Notification of cancellation of classes, rescheduling, or amendment of notification shall:

a. be received in writing, fax, via email, or other methods of submittal approved by the Office of Environmental Services one day before the class should have commenced; and

b. indicate the date and time of the course that is being cancelled, rescheduled or amended.

c. Rescheduled classes or amended notifications shall also indicate the changes that are being requested. This includes, but is not limited to day, time, locations, principal trainer, etc.

4. Within five working days of the completion of a class, the following shall be received by the Office of Environmental Services in a format approved by the department:

a. a complete roster of trainees and each principal trainer participating in the course;

b. a class photograph with a legible name on the back or at the bottom identifying each student and principal trainer;

c. each student's official identification number (e.g., driver's license, state identification card, or passport);

d. a 1" x 1 1/4" photograph of the face (front view) of each student;

e. the name of each principal trainer who taught the class; and

f. each student's examination grades.

i. If a student fails an initial exam, the roster shall include the word "failed" adjacent to the name on the roster.

ii. If a student retakes a previously failed exam, a separate notification shall be received by the Office of Environmental Services within five working days of the exam.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 39:

§2799. Appendix A—Agent Accreditation Plan

A. Purpose. Training requirements for purposes of accreditation are specified in both terms of required subjects of instruction and in terms of length of training. The duration of initial and refresher training courses is specified in numbers of days. A day of training equals eight consecutive training hours, including breaks and lunch. Course instruction shall be provided through DEQ RATPs. The training requirements that follow are for the training of persons required to have accreditation under the Toxic Substances Control Act (TSCA) Title II and LAC 33:III.2739.

1. Initial training courses for a specific discipline (e.g., workers, inspectors) require hands-on training. For asbestos abatement supervisors and workers, hands-on training shall include working with asbestos-substitute materials, fitting and using respirators, use of glove-bags, donning protective clothing, constructing a decontamination unit, as well as other abatement work activities. Hands-on training shall permit all supervisors and workers to have actual experience performing tasks associated with asbestos abatement. For inspectors, hands-on training shall include conducting a simulated building walk-through inspection and respirator fit testing.

2. Training requirements for each of the five accredited disciplines are outlined below. Persons in each discipline perform a different job function and distinct role. Inspectors identify and assess the condition of ACM, or suspect ACM. Management planners use data gathered by inspectors to assess the degree of hazard posed by ACBM in schools to determine the scope and timing of appropriate response actions needed for schools. Project designers determine how asbestos abatement work should be conducted. Lastly, workers and contractor/supervisors carry out and oversee abatement work. Each accredited discipline and training curriculum is separate and distinct from the others. A person seeking accreditation in any of the five accredited MAP disciplines cannot attend two or more courses concurrently, but may attend such courses

sequentially. All courses, both initial and refresher, shall be completed within 14 days of the commencement of the course.

B. Initial Training. The following are the initial training course requirements for persons required to have accreditation under LAC 33:III.2739 and Paragraph F.1 of this Section.

1. Inspectors. All persons who inspect for ACM shall be trained in accordance with this Section and accredited by the department. All persons seeking accreditation as inspectors shall complete a three-day training course as outlined below. The three-day program shall include lectures, demonstrations, four training hours of hands-on training, individual respirator fit testing, course review, and a written examination. The use of audiovisual materials is recommended to complement lectures, where appropriate. The inspector training course shall adequately address the following topics. Hands-on training shall include conducting a simulated building walk-through inspection and respirator fit testing.

a. Background Information on Asbestos: identification of asbestos; examples and discussion of the uses and locations of asbestos in buildings; physical appearance of asbestos.

b. Potential Health Effects Related to Asbestos Exposure: the nature of asbestos-related diseases; routes of exposure; dose-response relationships and the lack of a safe exposure level; the synergistic effect between cigarette smoking and asbestos exposure; the latency period for asbestos-related diseases; a discussion of the relationship of asbestos exposure to asbestosis, lung cancer, mesothelioma, and cancer of other organs.

c. Functions/Qualifications and Role of Inspectors: discussions of prior experience and qualifications for inspectors and management planners; discussions of the functions of an accredited inspector as compared to those of an accredited management planner; discussion of the inspection process including inventory of ACM and physical assessment.

d. Legal Liabilities and Defenses: responsibilities of the inspector and management planner; a discussion comprehensive general liability policies, claims made and occurrence policies, environmental and pollution liability policy clauses; state liability insurance requirements; bonding and the relationship of insurance availability to bond availability.

e. Understanding Building Systems: the interrelationship between building systems, including an overview of common building physical plant layouts; heat, ventilation, and air conditioning (HVAC) system types-physical organization and where asbestos is found on HVAC components; building mechanical systems, their types and organization, and where to look for asbestos on such systems; inspecting electrical systems, including appropriate safety precautions; reading blueprints and as-build drawings.

f. Public/Employee/Building Occupant Relations: notifying employee organizations about the inspection; signs to warn building occupants; tact in dealing with occupants and the press; scheduling of inspections to minimize disruption; and education of building occupants about actions being taken.

g. Pre-Inspection Planning and Review of Previous Inspection Records: scheduling the inspection and obtaining access; building record review; identification of probable homogeneous areas from blueprints or as-built drawings; consultation with maintenance or building personnel; review of previous inspection, sampling, and abatement records of a building; the role of the inspector in exclusions for previously performed inspections.

h. Inspecting for Friable and Nonfriable Asbestos-Containing Material (ACM) and Assessing the Condition of Friable ACM: procedures to follow in conducting visual inspections for friable and nonfriable ACM; types of building materials that may contain asbestos; touching materials to determine friability; open return air plenums and their importance in HVAC systems; assessing damage, significant damage, potential damage, and potential significant damage; amount of suspected ACM, both in total quantity and as a percentage of the total area; type of damage; accessibility; material's potential for disturbance; known or suspected causes of damage or significant damage; deterioration algorithm methods as assessment factors.

i. Bulk Sampling/Documentation of Asbestos in Buildings: detailed discussion of the "Simplified Sampling Scheme for Friable Surfacing Materials (EPA 560/585-030a October 1985);" techniques to ensure that sampling is randomly distributed for other than friable surfacing materials; sampling of nonfriable materials; techniques for bulk sampling; sampling equipment the inspector should use; additional sampling requirements and chain-of-custody forms if litigation is anticipated; patching or repair of damage done in sampling; an inspector's repair kit; discussion of polarized light microscopy; choosing an accredited laboratory to analyze bulk samples; quality control and quality assurance procedures. All asbestos bulk and air monitoring samples collected shall be analyzed by a laboratory that meets the requirements of LAC 33:I.Subpart 3.Chapters 45-59.

j. Inspector Respiratory Protection and Personal Protective Equipment: classes and characteristics of respirator types; limitations of respirators; proper selection, inspection, donning, use, maintenance, and storage procedures for respirators; methods for field testing of the facepiece-to-mouth seal (positive and negative pressure fitting tests); qualitative and quantitative fit testing procedures and their applicability; variability between field and laboratory protection factors; factors that alter respirator fit (e.g., facial hair); the components of a proper respiratory protection program; selection and use of personal protective clothing; and use, storage, and handling of nondisposable clothing.

k. Recordkeeping and Writing the Inspection Report: labeling of samples and keying sample identification to sampling location; recommendations on sample labeling; detailing of ACM inventory; photographs of selected sampling areas and examples of ACM condition; information required for inclusion in the management plan by LAC 33:III.2723.

l. Regulatory Review: EPA Worker Protection Rule in 40 CFR 763, Subpart G, TSCA Title II; OSHA Asbestos Construction Standard 29 CFR 1926.1001 et seq.; OSHA respirator requirements found at 29 CFR 1910.134 et seq.; the Asbestos-Containing Materials in Schools and State

Buildings Regulation found at LAC 33:III.Chapter 27; LAC 33:III.Chapter 51.Subchapter M; and differences in federal/state requirements where they apply and the effects, if any, on public and nonpublic schools, state and commercial or public buildings.

m. Field Trip: inclusion of a field exercise including a walk-through inspection; on-site discussion on information gathering and determination of sampling locations; on-site practice in physical assessment; classroom discussion of field exercise.

n. Course Review: review of key aspects of the training course.

2. Management Planners. All persons who prepare management plans for schools and state buildings shall be trained in accordance with this Section and accredited by the department. Possession of current and valid inspector accreditation shall be a prerequisite for admission to the management planner training course. All persons seeking accreditation as management planners shall complete an inspection training course as outlined above and a two-day management planning training course. The two-day training program shall include lectures, demonstration, course review, and a written examination. The use of audiovisual materials is recommended to complement lectures, where appropriate. The management planner training course shall adequately address the following topics.

a. Course Overview: the role of the management planner; operations and maintenance programs; setting work priorities; protecting building occupants.

b. Evaluation/Interpretation of Survey Results: review of TSCA Title II requirements for inspection and management plans as given in LAC 33:III.2723; summarized field data and laboratory results; comparison of field inspector's data sheet with laboratory results and site survey.

c. Hazard Assessment: amplification of the difference between physical assessment and hazard assessment; the role of the management planner in hazard assessment; explanation of significant damage, damage, potential damage, and potential significant damage; use of a description (or decision tree) code for assessment of ACM; assessment of friable ACM; relationship of accessibility, vibration sources, use of adjoining space, and air plenums and other factors to hazard assessment.

d. Legal Implications: liability; insurance issues specific to planners; liabilities associated with interim control measures, in-house maintenance, repair, and removal; use of results from previously performed inspections.

e. Evaluation and Selection of Control Options: overview of encapsulation, enclosure, interim operations and maintenance, and removal; advantages and disadvantages of each method; response actions described via a decision tree or other appropriate method; work practices for each response action; staging and prioritizing of work in both vacant and occupied buildings; the need for containment barriers and decontamination in response actions.

f. Roles of Other Professionals: use of industrial hygienists, engineers, and architects in developing technical specifications for response actions; any requirements that may exist for architect sign-off of plans; team approach to design of high-quality job specifications.

g. Developing an Operations and Maintenance (O and M) Plan: purpose of the plan; discussion of applicable EPA guidance documents; what actions should be taken by custodial staff; proper cleaning procedures; steam cleaning and high-efficiency particulate aerosol (HEPA) vacuuming; reducing disturbance of ACM; scheduling O and M for off-hours; rescheduling or canceling renovation in areas with ACM; boiler room maintenance; disposal of ACM; in-house procedures for ACM—bridging and penetrating encapsulants; pipe fittings; metal sleeves; polyvinyl chloride (PVC), canvas, and wet wraps; muslin with straps; fiber mesh cloth; mineral wool, and insulating cement; discussion of employee protection programs and staff training; case study in developing an O and M plan (development, implementation process, and problems that have been experienced).

h. Regulatory Review: focusing on the OSHA Asbestos Construction Standard 29 CFR 1926.1001 et seq.; LAC 33:III.Chapter 51.Subchapter M; LAC 33:III.Chapter 27; EPA Worker Protection Rule in 40 CFR 763, Subpart G.

i. Recordkeeping for the Management Planner: use of field inspector's data sheet along with laboratory results; ongoing recordkeeping as a means of tracking asbestos disturbance; procedures for recordkeeping.

j. Assembling and Submitting the Management Plan: plan requirements in LAC 33:III.2723; the management plan as a planning tool; the proper completion and submittal of required elements for management plans, Form AAC-8.

k. Financing Abatement Actions: economic analysis and cost estimates; development of cost estimates; present costs of abatement versus future operations and maintenance costs; Asbestos School Hazard Abatement Act grants and loans.

1. Course Review: review of key aspects of the training course.

3. Abatement Project Designers. A person shall be trained in accordance with this Section and accredited by the department as a project designer to design any of the following activities with respect to RACM in a school or state building: (1) a response action other than a SSSD maintenance activity, (2) a maintenance activity that disturbs friable ACBM other than a SSSD maintenance activity, or (3) a response action for a major fiber release episode. All persons seeking accreditation as abatement project designers shall complete a three-day abatement project designer training course as outlined below. The three-day abatement project designer training program shall include lectures, demonstrations, a field trip, course review, and a written examination. The use of audiovisual materials to complement lecturers, where appropriate, is recommended. The three-day abatement project designer training course shall adequately address the following topics.

a. Background Information on Asbestos: identification of asbestos; examples and discussion of the uses and locations of asbestos in buildings; physical appearance of asbestos.

b. Potential Health Effects Related to Asbestos Exposure: nature of asbestos-related diseases; routes of exposure; dose-response relationships and the lack of a safe exposure level; the synergistic effect between cigarette smoking and asbestos exposure; the latency period of

asbestos-related diseases; a discussion of the relationship between asbestos exposure and asbestosis, lung cancer, mesothelioma, and cancer of other organs.

c. Overview of Abatement Construction Projects: abatement as a portion of a renovation project; OSHA requirements for notification of other contractors on a multi-employer site (29 CFR 1926.1101(d)).

d. Safety System Design Specifications: construction and maintenance of containment barriers and decontamination enclosure systems; positioning of warning signs; electrical and ventilation system lock-out; proper working techniques for minimizing fiber release; entry and exit procedures for the work area; use of wet methods; use of negative pressure exhaust ventilation equipment; use of high-efficiency particulate air (HEPA) vacuums; proper cleanup and disposal of asbestos; work practices as they apply to encapsulation, enclosure, and repair; use of glove bags and a demonstration of glove-bag use.

e. Field Trip: visit to an abatement site or other suitable building site, including on-site discussions of abatement design, building walk-through inspection, and discussion of rationale for the concept of functional spaces during the walk-through.

f. Employee Personal Protective Equipment: the classes and characteristics of respirator types; limitations of respirators; proper selection, inspection, donning, use, maintenance, and storage procedures; methods for field testing of the facepiece-to-face seal (positive and negative pressure fitting tests); qualitative and quantitative fit testing procedures; variability between field and laboratory protection factors; factors that alter respirator fit (e.g., facial hair); components of a proper respiratory protection program; selection and use of personal protective clothing, including use, storage, and handling of nondisposable clothing; regulations covering personal protective equipment.

g. Additional Safety Hazards: hazards encountered during abatement activities and how to deal with them, including electrical hazards, heat stress, air contaminants other than asbestos, fire, and explosion hazards.

h. Fiber Aerodynamics and Control: aerodynamic characteristics of asbestos fibers; importance of proper containment barriers; settling time for asbestos fibers; wet methods in abatement; aggressive air monitoring after abatement; aggressive air movement and negative pressure exhaust ventilation as a cleanup method.

i. Designing Abatement Solutions: discussions of removal, enclosure, and encapsulation methods; asbestos waste disposal.

j. Final Clearance Process: discussion of the need for a written sampling rationale for aggressive final air clearance; requirements of a complete visual inspection; the relationship of the visual inspection to final air clearance; and discussion of the use of TEM analysis in the final clearance process.

k. Budgeting/Cost Estimation: development of cost estimates; present costs of abatement versus future operations and maintenance costs; setting priorities for abatement jobs to reduce cost.

l. Writing Abatement Specifications: preparation of and need for a written project design; means and methods specifications versus performance specifications; design of

abatement in occupied buildings; modification of guide specifications to fit a particular building; worker and building occupant health/medical considerations; replacement of ACM with nonasbestos substitutes; clearance of work area after abatement; air monitoring for clearance.

m. Preparing Abatement Drawings: significance and need for drawings, use of as-built drawings; use of inspection photographs and on-site reports; methods of preparing abatement drawings; diagramming containment barriers; relationship of drawings to design specifications; particular problems with abatement drawings.

n. Contract Preparation and Administration

o. Legal/Liabilities/Defenses: insurance considerations; bonding; hold harmless clauses; use of abatement contractor's liability insurance; claims-made versus occurrence policies.

p. Replacement: replacement of asbestos with asbestos-free substitutes.

q. Roles of Other Consultants: development of technical specification sections by industrial hygienists or engineers; the multidisciplinary team approach to abatement design.

r. Occupied Buildings: special design procedures required in occupied buildings; education of occupants; extra monitoring recommendations; staging of work to minimize occupant exposure; scheduling of renovation to minimize exposure.

s. Relevant Federal, State, and Local Regulatory Requirements: procedures and standards, including:

i. requirements of TSCA Title II;

ii. LAC 33:III.Chapter 51.Subchapter M, Asbestos;

iii. LAC 33:III.Chapter 27, Asbestos-Containing Material in Schools and Public Buildings;

iv. OSHA standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection (29 CFR 1910.1101(c) or 29 CFR 1926.(c), whichever is applicable);

v. Worker Protection Rule, in 40 CFR 763 Subpart G; and

vi. OSHA Asbestos Construction Standard in 29 CFR 1926.1101 et al. and OSHA Hazard Communication Standard found at 29 CFR 1910.1101(d).

t. Course Review: a review of key aspects of the training course.

4. Asbestos Abatement Contractor/Supervisors. A person must be accredited as a contractor/supervisor to supervise any of the following activities with respect to RACM: (1) a response action other than a SSSD activity, (2) a maintenance activity that disturbs RACM other than a SSSD activity, or (3) a response action for a major fiber release episode. All persons seeking accreditation as asbestos abatement supervisors shall complete a five-day training course as outlined below. The training course shall include lectures, demonstrations, at least 14 training hours of hands-on training, individual respirator fit testing, course review, and a written examination. The hands-on training shall include abatement work activities to include working with asbestos-substitute materials, the use of glove bags and protective clothing, proper bagging and wrapping, and constructing a decontamination unit. The use of audiovisual materials is recommended to complement lectures, where

appropriate. For purposes of Louisiana state accreditation, asbestos abatement supervisors include those persons who provide supervision and direction to workers engaged in asbestos removal, encapsulation, enclosure, or repair. Supervisors may include those individuals with the position title of foreman, working foreman, or leadman pursuant to collective bargaining agreements. At least one supervisor is required to be at the worksite at all times while work is in progress. Asbestos workers must have access to accredited supervisors throughout the duration of the project. Contracted air-monitoring personnel shall be trained in accordance with this Section and accredited as contractor/supervisor. Hands-on training shall permit supervisors to have actual experience performing tasks associated with asbestos abatement. The supervisor's training course shall adequately address the following topics.

a. The Physical Characteristics of Asbestos and Asbestos-Containing Materials: identification of asbestos; aerodynamic characteristics; typical uses; physical appearance; a review of hazard assessment considerations; summary of abatement control options.

b. Potential Health Effects Related to Asbestos Exposure: the nature of asbestos-related diseases; routes of exposure; dose-response relationships and the lack of a safe exposure level; synergism between cigarette smoking and asbestos exposure; latency period for disease.

c. Employee Personal Protective Equipment: classes and characteristics of respirator types; limitations of respirators and their proper selection, inspection, donning, use, maintenance, and storage procedures; methods for field testing of the facepiece-to-face seal (positive and negative pressure fitting tests); qualitative and quantitative fit testing procedures; variability between field and laboratory protection factors; factors that alter respirator fit (e.g., facial hair); the components of a proper respiratory protection program; selection and use of personal protective clothing, including use, storage, and handling of nondisposable clothing; regulations covering personal protective equipment.

d. State-of-the-Art Work Practices: proper work practices for asbestos abatement activities, including descriptions of proper construction and maintenance of barriers and decontamination enclosure systems; positioning of warning signs; electrical and ventilation system lockout; proper working techniques for minimizing fiber release; use of wet methods; use of negative pressure ventilation equipment; use of high-efficiency particulate air (HEPA) vacuums; proper cleanup and disposal procedures, including bagging and wrapping; work practices for removal, encapsulation, enclosure, and repair; emergency procedures for sudden releases; potential exposure situations; transport and disposal procedures; recommended and prohibited work practices. Discussion of new abatement-related techniques and methodologies may be included.

e. Personal Hygiene: entry and exit procedures for the work area; use of showers; avoidance of eating, drinking, smoking, and chewing (gum or tobacco) in the work area. Potential exposures, such as family exposure, shall also be included.

f. Additional Safety Hazards: hazards encountered during abatement activities and how to deal with them, including electrical hazards, heat stress, air contaminants

other than asbestos, fire and explosion hazards, scaffold and ladder hazards, slips, trips, and falls, and confined spaces.

g. Medical Monitoring: OSHA and EPA Worker Protection Rule requirements for physical examinations, including a pulmonary function test, chest x-rays, and a medical history for each employee.

h. Air Monitoring: procedures to determine airborne concentrations of asbestos fibers, including a description of aggressive sampling, sampling equipment and methods, reasons for air monitoring, types of samples, and interpretation of results, specifically from analysis performed by polarized light, phase-contrast, and electron microscopy analyses.

i. Relevant Federal, State, and Local Regulatory Requirements: procedures and standards, including:

i. requirements of TSCA Title II;

ii. LAC 33:III.Chapter 51.Subchapter M. Asbestos;

iii. LAC 33:III.Chapter 27, Asbestos-Containing Material in Schools and State Buildings Regulation;

iv. OSHA standards for permissible exposure to airborne concentrations of asbestos fibers (29 CFR 1910.(c)) and respiratory protection (29 CFR 1910.134 et seq.);

v. OSHA Asbestos Construction Standard (29 CFR 1926.1101 et al.; and

vi. 40 CFR 763 Subpart G, Worker Protection Rule.

j. Respiratory Protection Programs and Medical Surveillance Programs

i. OSHA standards for respiratory protection (29 CFR 1910 et seq.);

ii. OSHA protection factors for respirators (29 CFR 1910.1001(g) et seq. and medical surveillance (29 CFR 1926 et seq.); and

iii. EPA protection factors for respirators (40 CFR 763.122).

k. Insurance and Liability Issues: contractor issues; worker's compensation coverage and exclusions; third-party liabilities and defenses; insurance coverage and exclusions.

l. Recordkeeping for Asbestos Abatement Projects: records required by federal, state, and local regulations; records recommended for legal and insurance purposes.

m. Supervisory Techniques for Asbestos Abatement Activities: supervisory practices to enforce and reinforce the required work practices and discourage unsafe work practices.

n. Contract Specifications: discussion of key elements that are included in contract specifications.

o. Course Review: review of key aspects of the training course.

5. Asbestos Abatement Workers. A person shall be trained in accordance with this Section and accredited as a worker by the department to carry out any of the following activities with respect to RACM: (1) response action other than a SSSD activity, (2) a maintenance activity that disturbs RACM other than a SSSD activity, or (3) a response action for a major fiber release episode. All persons seeking accreditation as asbestos abatement workers shall complete at least a four-day training course as outlined below. The worker training course shall include lectures, demonstrations, at least 14 training hours of hands-on training, individual respirator fit testing, course review, and

an examination. The hands-on training shall include abatement work activities to include working with asbestos-substitute materials, the use of glove bags and protective clothing, proper bagging and wrapping, and constructing a decontamination unit. The use of audiovisual materials is recommended to complement lectures, where appropriate. Hands-on training shall permit workers to have actual experience performing tasks associated with asbestos abatement. A person who is otherwise accredited as a contractor/supervisor may perform in the role of a worker without possessing separate accreditation as a worker. The training course shall adequately address the following topics.

a. Physical Characteristics of Asbestos: identification of asbestos, aerodynamic characteristics, typical uses, and physical appearance, and a summary of abatement control options.

b. Potential Health Effects Related to Asbestos Exposure: the nature of asbestos-related diseases, routes of exposure, dose-response relationships, and the lack of a safe exposure level; synergism between cigarette smoking and asbestos exposure; latency period for disease and a discussion of the relationship of asbestos exposure to asbestosis, lung cancer, mesothelioma, and cancers of other organs.

c. Employee Personal Protective Equipment: classes and characteristics of respirator types; limitations of respirators and their proper selection, inspection, donning, use, maintenance, and storage procedures; methods for field testing of the facepiece-to-face seal (positive and negative pressure fitting tests); qualitative and quantitative fit testing procedures; variability between field and laboratory protection factors; factors that alter respirator fit (e.g., facial hair); the components of a proper respiratory protection program; selection and use of personal protective clothing; use, storage, and handling of nondisposable clothing; and regulations covering personal protective equipment.

d. State-of-the-Art Work Practices: proper work practices for asbestos abatement activities including descriptions of proper construction and maintenance of barriers and decontamination enclosure systems; positioning of warning signs; electrical and ventilation system lockout; proper working techniques for minimizing fiber release; use of wet methods; use of negative pressure ventilation equipment; use of high-efficiency particulate air (HEPA) vacuums; proper cleanup and disposal procedures including wrapping and bagging; work practices for removal, encapsulation, enclosure, and repair, emergency procedures for sudden releases; potential exposure situations; transport and disposal procedures; and recommended and prohibited work practices.

e. Personal Hygiene: entry and exit procedures for the work area; use of showers; avoidance of eating, drinking, smoking, and chewing (gum or tobacco) in the work area; potential exposures, such as family exposure.

f. Additional Safety Hazards: hazards encountered during abatement activities and how to deal with them, including electrical hazards, heat stress, air contaminants other than asbestos, fire and explosion hazards, scaffold and ladder hazards, slips, trips, falls, and confined spaces.

g. Medical Monitoring: OSHA and EPA Worker Protection Rule requirements for a pulmonary function test, chest x-rays, and a medical history for each employee.

h. Air Monitoring: procedures to determine airborne concentrations of asbestos fibers, focusing on how personal air sampling is performed and the reasons for it.

i. Relevant Federal, State and Local Regulatory Requirements, Procedures, and Standards: particular attention directed at relevant EPA, OSHA, and state regulations concerning asbestos abatement workers.

j. Establishment of Respiratory Protection Programs.

k. Course Review: review of key aspects of the training course.

C. Examination. A closed-book examination shall be given to all persons seeking accreditation who have completed an initial training course. A person seeking accreditation in a specific discipline shall pass the examination for that discipline prior to receiving a training certificate. For example, a person seeking accreditation as an inspector must pass the inspector's accreditation examination given by the training provider. Each examination shall adequately cover the topics included in the training course for that discipline. Persons who pass and fulfill other associated requirements will receive a certificate indicating that they are trained in a specific discipline. The following are the requirements for examinations in each area:

1. inspectors:
 - a. 50 multiple choice questions;
 - b. passing score—70 percent;
2. management planners:
 - a. 50 multiple choice questions;
 - b. passing score—70 percent;
3. abatement project designers:
 - a. 100 multiple choice questions;
 - b. passing score—70 percent;
4. asbestos abatement contractors and supervisors:
 - a. 100 multiple choice questions;
 - b. passing score—70 percent;
5. asbestos abatement workers:
 - a. 50 multiple choice questions;
 - b. passing score—70 percent.

D. Refresher Training Courses. The refresher course shall be specific to each discipline. Refresher courses shall be conducted as separate and distinct courses and not combined with any other training during the period of the refresher course.

1. For all disciplines except inspectors, a one-day annual refresher training course is required for reaccreditation.

2. Refresher courses for inspectors shall be a half-day length.

3. Management planners shall attend the inspector refresher course, plus an additional half-day on management planning.

4. For each discipline, the refresher course shall review and discuss changes in federal and state regulations, developments in state-of-the-art procedures, and a review of key aspects of the initial training courses, including Louisiana regulations.

5. After completing the annual refresher course, persons shall have their training extended an additional year. If a refresher course is not completed within two years of the last course completion date, the initial training course has to be retaken for reaccreditation.

E. Qualifications. In addition to training and an examination, inspectors, management planners, and abatement project designers shall meet the requirements listed below.

1. Inspectors. Qualifications—possess a high school diploma or GED.

2. Management Planners. Qualifications:

a. a certification, registration, or license to practice as an architect, professional engineer, or industrial hygienist;

b. bachelor's degree in a related scientific field; or

c. a bachelor's degree and five years experience related to assessments and abatement projects in schools and state buildings as an accredited asbestos inspector.

3. Abatement Project Designer. Qualifications:

a. a certification, registration or license to practice as an architect, professional engineer, or industrial hygienist;

b. a bachelor of science degree in a related scientific field with five years experience as a contractor/supervisor working under the direction of a Louisiana accredited project designer, assisting in the planning and implementing asbestos abatement projects; or

c. a high school diploma or GED together with at least 10 years experience as a contractor/supervisor working under the direction of a Louisiana accredited project designer, assisting in the planning and implementing asbestos abatement projects.

F. Accreditation of Agents

1. Accreditation is required for:

a. persons who inspect for the presence of asbestos in facilities regulated under LAC 33:III.Chapters 27 and 51, including but not limited to schools and/or state buildings, public or commercial buildings, or industrial areas;

b. persons who develop management plans for schools and/or state buildings, or those buildings used or leased by the state;

c. persons who design or carry out response actions for schools and/or state buildings involving RACM (other than SSSD);

d. persons contracted to perform air monitoring in schools, state buildings, public or commercial buildings, or industrial areas;

e. persons contracted to strip, remove, or otherwise handle or disturb RACM in facilities regulated under LAC 33:III.Chapters 27 and 51, including but not limited to schools, state buildings, public or commercial buildings, or industrial areas.

2. Application for Accreditation. The applicant for accreditation shall submit the following items:

a. the latest version of a completed and legible asbestos accreditation affidavit, Form AAC-1 (which may be obtained from the Office of Environmental Services or through the department's website) that contains:

i. the applicant's name, address, telephone number, fax number, and email address;

ii. the applicant's driver's license or state identification number and the issuing state;

iii. the name, address, telephone number, fax number, and email address of the applicant's employer;

iv. an identification of the disciplines in which accreditation is sought;

v. Form AAC-1 statement of regulation possession, knowledge and enforceability;

vi. the applicant's previous agency interest number (AI #), if applicable; and

vii. the applicant's signature and the date of application;

b. a copy of the current class training certificate. First time applicants shall also submit copies of initial training and all subsequent refresher (update) certificates;

i. the training course(s) shall have at least contingent approval from EPA or be approved by a state authorized by the EPA to approve training courses;

ii. applicants receiving initial training in a location other than within the state of Louisiana from training providers recognized by EPA or an EPA-authorized state shall also submit proof of training in a 2-training hour Louisiana regulations course from a Louisiana RATP;

c. applications for inspector, management planner, and project designer shall include, where applicable:

i. a copy of a high school diploma, general educational development (GED) certificate or documentation of the highest level of education achieved (including as necessary, a bachelor's degree in a related field);

ii. a copy of proof of certification registration or license to practice as an architect, industrial hygienist, or a professional engineer;

iii. proof of experience as a contractor/supervisor working under the direction of a Louisiana accredited project designer, assisting in the planning and implementing asbestos abatement projects shall be in writing, and include documentation related to assessments of schools and/or state buildings;

iv. proof of experience as a contractor/supervisor working under the direction of a Louisiana accredited project designer, assisting in the planning and implementing asbestos abatement projects; or

v. proof of at least 10 years experience as a contractor/supervisor working under the direction of a Louisiana accredited project designer, assisting in the planning and implementing asbestos abatement projects, including a letter of certification from the Louisiana accredited project designer under whom the experience was gained, stating that the applicant has the knowledge and skills to perform as an asbestos abatement project designer.;

d. Applicable fees as noted in LAC 33:III.223;

e. A 1" x 1 1/4" photograph of the applicant's face (front view) labeled with their name;

3. The completed application with applicable fees (LAC 33:III.223) shall be sent to the Office of Environmental Services.

4. Persons shall be considered accredited upon receipt of a certificate of accreditation or identification card issued by the department.

5. Approved Applications

a. Accreditation numbers shall be issued to all approved agents.

b. A qualified individual seeking accreditation shall be issued accreditation certificates, which expire one year after the last day of his or her most recent training course.

6. Renewal of Accreditation

a. To renew accreditation, all persons shall submit an application in accordance with the requirements of Paragraph F.2 of this Appendix.

b. A qualified individual shall maintain continuous accreditation provided the individual submits the required documents at least 30 days prior to his or her expiration/renewal date.

i. If an individual seeking reaccreditation has received refresher training within 90 days prior to his or her existing expiration/renewal date, his or her accreditation shall be extended for one year from the existing expiration/renewal date.

ii. If an individual seeking reaccreditation has received refresher training earlier than 90 days prior to his or her existing expiration/renewal date, his or her new expiration/renewal date will be one year after the last day of his or her most current training.

c. If a qualified individual does not submit an application for renewal within the time provided in Subparagraph F.6.b of this Appendix, his or her accreditation will lapse at the expiration of the term of the accreditation. A qualified individual may be reaccredited upon an application for renewal in accordance with Subparagraph F.6.a of this Appendix. The accreditation expiration/renewal date will be one year after the last day of his or her most current training, provided the applicant has received refresher training within two years of the last course completion date. If a refresher is not taken within two years of the last course completion date, the initial training course shall be required for reaccreditation in accordance with Paragraph D.5 of this Appendix.

7. Agents who are supervisor accredited are responsible for ensuring that maintenance personnel in schools and state buildings are properly trained as defined in LAC 33:III.2721 and that workers trained to meet LAC 33:III.2739.B.3 are accredited.

8. Revocation of Accreditation. Accredited agents may have accreditation revoked for:

a. failure to comply with or direct others to comply with LAC 33:III.Chapters 27 and 51, and other applicable federal, state, and local regulations;

b. failure to notify the Office of Environmental Services of changes in status;

c. failure to operate safely and/or protect the environment;

d. failure to allow a department representative to inspect and review sites and documentation;

e. failure to submit valid and accurate accreditation application documents and/or training documents;

f. performing work requiring accreditation at a job site without being in physical possession of initial and current accreditation certificates;

g. permitting the duplication or use of one's own accreditation certificate by another;

h. performing work for which accreditation has not been received; and

i. obtaining training from a training provider that does not have approval to offer training for the particular discipline from either EPA or from a state authorized by EPA that has an accreditation plan at least as stringent as the EPA model accreditation plan (MAP).

9. Revocation of accreditation shall be effective for no less than one year.

10. Prohibitions

a. The alteration or possession of altered certificates is prohibited.

b. The submission of any false statement, representation, or certification in any form, application, report, plan, or any other document filed or required to be submitted to/or maintained by the department is prohibited.

c. A student shall not participate both as a student and as a principal trainer in their own asbestos training courses for certification, and shall not sign their own training certificate.

G. RATP and Principal Trainers. RATPs and principal trainers shall be recognized by the department prior to conducting training of approved courses in Louisiana. Principal trainers who conduct asbestos courses in Louisiana shall do so in association with a RATP recognized by the department.

1. Asbestos training providers requesting recognition shall provide the following:

a. the latest version of the asbestos training provider recognition application, Form AAC-3, (which may be obtained from the Office of Environmental Services or through the department's website) requesting approval to train asbestos agents;

b. the latest version of the asbestos trainer recognition application, Form AAC-4, with resumes for principal trainers;

c. two or more principal trainers shall be listed for each initial training course; and

d. appropriate fees (LAC 33:III.223).

2. The asbestos training provider recognition application shall, at a minimum, include the following:

a. the name, address, telephone number, and email address of the training provider's primary offices and the representative serving as the contact for the provider for the scheduling of training courses and for other training activities;

b. the signature of a responsible official for the training provider; and

c. information on the specific courses including:

i. course discipline (e.g., worker, contractor/supervisor, inspector, etc.);

ii. course type (i.e., initial or refresher);

iii. the language in which the course will be taught;

iv. all addresses of the physical locations where courses will be held during the year;

v. a description of the facility where the classes will be held (e.g., warehouse, industrial building, etc.)

vi. copies of the latest version of training materials including texts, syllabi, and outlines, but not including exams;

(a). if the latest version of training material was submitted with the last application, a note to that effect is sufficient;

(b). the training material shall be provided in the language it will be taught; and

(c). the department reserves the right to request a copy of the training material at any time;

vii. a detailed statement about the development of the examination used in the course. The statement shall include, but is not limited to:

- (a). the number of questions for each exam;
 - (b). the topics covered in the exam; and
 - (c). the number of questions specifically relating to Louisiana regulations; and
- viii. a detailed statement clearly indicating how the course meets the requirements of this Appendix for:
- (a). length of training days;
 - (b). amount and type of hands-on training;
 - (c). examination (e.g., length, format, passing score);
 - (d). topics covered in the course;
 - (e). a copy of an example training completion certificate; and
 - (f). a copy of the EPA letter recognizing approval of the training provider's course or approval from a state authorized by EPA to approve training courses, if applicable.

3. Trainers seeking recognition shall submit:

- a. the latest version of the asbestos trainer recognition form, AAC-4;
- b. appropriate fees (LAC 33:III.223);
- c. a resume indicating proof of experience in the subjects they will teach which includes the following experience requirements:
 - i. a degree or training certification in the subject being taught; and
 - ii. experience in the field for two or more years;
- d. a person experienced as a supervisor/contractor is also considered experienced as a worker.

4. Training Providers and Trainers Recognition

- a. Training providers and trainers shall be considered recognized upon written confirmation from the department or upon receipt of a certificate of recognition from the department.
- b. Training recognition numbers will be issued to all recognized training providers and principal trainers. The recognition is effective for one year from the date issued.
- c. Recognition of training providers and trainers may be renewed annually by submitting the latest revision of Forms AAC-3 and AAC-4 respectively along with all appropriate updates to the information required for the application and the applicable fees to the department.

5. Applications for training provider and trainer recognition may be denied for:

- a. incomplete applications;
- b. inaccurate or falsified information;
- c. incomplete supporting documentation;
- d. failure to comply with applicable federal, state, and local regulations, which includes nonpayment of fees or a history of noncompliance with LAC 33:III. Chapters 27 and 51; and
- e. at the discretion of the department based on past compliance history.

6. Training courses will be given contingent approval based upon the review of course materials and inclusion of those topics required under Subsection B of this Appendix when applicable. Full approval may be given upon completion of an audit of the courses.

7. Recognition for a training course may be denied if the training provider fails to:

- a. comply with the course requirements outlined in Paragraph G.4 of this Appendix; and

b. comply with the notification requirements outlined in Paragraph G.7 of this Appendix.

8. Compliance and Enforcement. A recognized training provider or recognized trainer may have their recognition withdrawn or revoked for one or more years according to one or more of the following criteria:

- a. failure to issue certificates which includes the information required by these regulations;
- b. failure to ensure that the training materials are applicable to the class taught, and are included in the latest material submitted to the department as part of the initial or renewal application;
- c. failure to ensure that the training material includes the most current version of the DEQ forms, obtained from the department website;
- d. failure to ensure that the Office of Environmental Services is informed of any change in status of the training organization, such as pending fines, notices of violation, changes in principal trainer status, etc;
- e. failure to ensure that a timely notification of courses that will be taught, including where, when, and who will conduct the class, or that a cancellation of classes is received by the Office of Environmental Services before the class should have commenced;
- f. failure to ensure that an accurate, timely, and complete roster is received by the Office of Environmental Services;
- g. misrepresentation of the extent of a training course's approval by a state or EPA;
- h. failure to submit required information or notifications in a timely manner;
- i. failure to maintain requisite records;
- j. falsification of recognition or accreditation records, trainer qualifications, or other information;
- k. falsification of any information regarding the principal trainer and course location on the notification or roster;
- l. misrepresenting the contents of a training course to the department and/or the student population;
- m. making false or misleading statements to the department, EPA, or another state in its application for recognition;
- n. failure to adhere to the training standards and requirements of the agent accreditation plan and the EPA MAP; and/or
- o. failure to meet any of the requirements of this Appendix.

9. Three violations of any of the requirements of this Subsection will result in the training provider or principal trainer permanently losing their recognition to teach courses in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended LR 16:397 (May 1990), LR 16:1057 (December 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), LR 22:700 (August 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2458 (November 2000), amended by the Office of Environmental Assessment, LR 30:2022 (September 2004), LR 30:2803 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2444

(October 2005), LR 33:2090 (October 2007), amended by the Office of the Secretary, Legal Division, LR 39:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

This Rule has no known impact on poverty as described in R.S. 49:973.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ329. Such comments must be received no later than June 5, 2013, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to deidra.johnson@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ329. These proposed regulations are available on the internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 North Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Public Hearing

A public hearing will be held on May 29, 2013, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

Herman Robinson, CPM
Executive Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Asbestos-Containing Materials in
Schools and State Buildings**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There are no implementation costs or savings to state or local government units as a result of the proposed Rule change. The Rule is being amended to update and clarify language requiring local education agencies and state government to inspect schools and state building for asbestos containing material, and update asbestos training course requirements.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

There are no costs and/or economic benefits to directly affected persons or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

There is no effect on competition and employment related to this Rule change.

Herman Robinson, CPM
Executive Counsel
1304#054

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of the Secretary
Legal Division**

Emission Standard for Asbestos (Demo/Reno)
(LAC 33:III.5151)(AQ330)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.5151 (AQ330).

LAC 33:III.Chapter 5151 regulates each owner or operator of a demolition or renovation activity, including the removal of regulated asbestos-containing material or the renovation or demolition of asbestos-containing materials. The regulation provides for notification and accreditation requirements. This action is required to delete unnecessary language, clarify some language in the regulations and make necessary changes in order to help implement the programs. The basis and rationale for this Rule revision is to clarify language adopted from federal regulations to ensure that the regulated community understands the requirements to protect public health when disturbing asbestos-containing materials. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33
ENVIRONMENTAL QUALITY
Part III. Air**

**Chapter 51. Comprehensive Toxic Air Pollutant
Emission Control Program**

Subchapter M. Asbestos

§5151. Emission Standard for Asbestos

A. Applicability. The provisions of this Subchapter are applicable to those sources specified in Subsections C-O of this Section.

B. Definitions. Terms used in this Section are defined in LAC 33:III.111 of these regulations with the exception of those terms specifically defined in LAC 33:III.5103 or below, as follows.

Accessible—asbestos-containing material that is subject to disturbance by facility occupants, custodial or maintenance personnel in the course of their normal activities. *Accessible* also refers to asbestos-containing

material that is available for examination and sampling purposes prior to a demolition or renovation.

* * *

Adequately Wet—sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing materials, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being *adequately wet*. Once contained, water droplets formed inside disposal containers will be sufficient evidence of being *adequately wet*. Lack of water droplets means it is not *adequately wet*.

Asbestos—the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, and actinolite-tremolite.

Asbestos-Containing Material (ACM)—any material or product that contains more than 1 percent asbestos.

Asbestos-Contaminated Debris (ACD)—demolition or renovation debris that contains *regulated asbestos-containing material* as defined in this Subsection, or asbestos containing transite.

Asbestos-Contaminated Debris Activity (ACDA)—the handling and/or disposal of asbestos-contaminated debris as RACM.

* * *

Asbestos-Containing Waste Material (ACWM)—mill tailings or any waste that contains commercial or previously commercial asbestos and is generated by a source subject to the provisions of this Subchapter. This term includes filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovation operations, this term also includes regulated asbestos-containing material waste and materials contaminated with asbestos, including *ACD*, and disposable equipment and clothing.

* * *

Category I Nonfriable (ACM)—asbestos-containing packings, gaskets, resilient floor covering, mastic, and asphalt roofing products containing more than 1 percent asbestos as determined by using the method specified in Appendix A, Subpart F, 40 CFR, Part 763, Section 1, Polarized Light Microscopy that when dry cannot be crumbled, pulverized, or reduced to powder by hand pressure.

* * *

Demolition—the permanent wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

* * *

Enclosure—an airtight, impermeable, barrier around ACM to prevent the release of asbestos fibers into the ambient air.

* * *

Facility—any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, and residential buildings having greater than four dwelling units); any ship; and any active or inactive waste disposal, or ACD site. Residential buildings

that have four or fewer dwelling units are exempt from the provisions of this Subchapter, except those residential structures that are intentionally demolished or renovated as part of a commercial or public project, such as urban renewal or highway right-of-way projects and those that are intentionally burned. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this Subchapter is not excluded, regardless of its current use or function.

Facility Component—any part of a facility, including equipment, that is under the control of an owner or operator.

Fiber Release Episode—any uncontrolled or unintentional disturbance of ACM.

Friable Asbestos Material—any material containing more than 1 percent asbestos as determined by using the method specified in Appendix E, Subpart E, 40 CFR, Part 763, Section 1, Polarized Light Microscopy that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), the asbestos content can be verified by point counting using PLM, or assume the amount to be greater than 1 percent and treat the material as ACM.

* * *

Glove Bag—a sealed compartment with attached inner gloves used for the handling of ACM. Properly installed and used, *glove bags* provide a small work area enclosure typically used for small-scale asbestos stripping operations.

a. - c. ...

d. Any deviation from single use of a *glove bag* requires prior written approval of the administrative authority. Additional information on *glove bag* installation, equipment and supplies, and work practices can be obtained from the Occupational Safety and Health Administration's (OSHA's) final Rule on occupational exposure to asbestos (29 CFR 1926.1101, Appendix G).

* * *

Inspection or Inspect—an examination of a facility or facility component to determine the presence or location, or to assess the condition of friable or nonfriable asbestos material, or suspected asbestos material, whether by visual or physical examination, or by collecting samples of such material. This term includes reinspections of assumed asbestos material and friable and nonfriable asbestos material which has been previously identified. The term does not include the following:

a. periodic surveillance of the type described in LAC 33:III.2721.B solely for the purpose of recording or reporting a change in the condition of known or assumed asbestos material;

b. inspections performed by employees or agents of federal, state, or local government solely for the purpose of determining compliance with applicable statutes or regulations; or

c. visual inspections of the type described in LAC 33:III.2717.J solely for the purpose of determining completion of response actions.

Installation—any building or structure or any group of buildings or structures at a single demolition or renovation

site that are part of planned projects that are under the control of the same owner or operator (or owner or operator under common control).

Negative Declaration—a notification of a demolition of a building stating that a facility contains no *RACM*.

Nonscheduled Operation—a renovation operation necessitated by the routine failure of equipment, which is expected to occur within a given period based on past operation experience, but for which an exact date cannot be predicted. Diaphragm cell renewal is considered a nonscheduled operation.

Operations and Maintenance (O and M)—Repealed.

Owner or Operator of a Demolition or Renovation or ACD Activity—any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated, or an ACDA or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, both, or an ACDA.

Recognized Disposal Site—Repealed.

Recognized Asbestos Landfill (RAL)—a waste disposal site authorized by DEQ to accept *RACM*, or an out-of-state waste disposal site authorized by that state's authority to accept *RACM*, and recognized by DEQ, Office of Environmental Services after receipt of an Asbestos Landfill Recognition Form (AAC-7).

Regulated Asbestos-Containing Material (RACM)—

- a. friable asbestos material;
- b. Category I and II nonfriable ACM that has become friable;
- c. Category I and II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, grinded, sanded, cut, abraded, or reduced to powder by the forces that have acted or are expected to act on the material in the course of demolition or renovation operations; or
- d. resilient floor covering or the mastic used to attach it to the floor surface that is scraped, sanded, abraded, bead blasted, cut, ground, crumbled, pulverized, or reduced to powder by any means, either hand or mechanical equipment. This definition does not include resilient floor covering removed by using dry ice, heat, wet methods, and chemicals where the tiles or sheeting are removed intact (minor tears or minor breakage is acceptable where, for all intents and purposes, the flooring is considered whole).

Remove—to take out *RACM* or facility components that contain or are covered with *RACM*.

Renovation—altering a facility or one or more facility components in any way, including the washing, stripping, or removal of *RACM* from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions.

Response Action—a method, including removal, encapsulation, enclosure, repair, and operations and maintenance activities, that protects human health and the environment from *RACM*.

Small-Scale, Short-Duration (SSSD) Activities—
Repealed

State Building—Repealed

Urban Renewal—demolitions or renovations of blighted or condemned properties authorized or conducted by government entities (city, parish, or state) as part of commercial or public projects.

Waste Shipment Record—the shipping document, asbestos disposal verification form, (ADVF), required to be originated and signed by the waste generator or the owner or operator of a demolition or renovation activity, used to track and substantiate the disposition of asbestos-containing waste material to a RAL.

Wet Methods—for resilient floor coverings, wetting sufficiently to cause the coverings to break loose or lift from the substrate in whole pieces.

Work Area Controls—work practices and engineering procedures that shall be used when removing *RACM*, as outlined in OSHA 29 CFR 1926.1101.g.

C. - E.8. ...

F. Emission Standard for Demolition, Renovation, Asbestos-Contaminated Debris Activities, Response Actions and Major Fiber Release Episodes

1. Applicability. To determine which requirements of Paragraphs F.1, 2 and 3 of this Section apply to the owner or operator of a response action, ACDA, demolition, or renovation activity and prior to the commencement of the activity, the owner/operator shall either assume that *RACM*, as defined in Subsection B of this Section, is present or an accredited inspector shall thoroughly inspect the affected facility or part of the facility where the activity will occur for the presence of asbestos, including Category I and Category II nonfriable ACM. All homogeneous areas that potentially contain asbestos shall either be assumed to be *RACM* or samples shall be collected and submitted for analysis. The requirements of Paragraphs F.2 and 3 of this Section apply to each owner or operator of a demolition or renovation activity, response actions, and *ACDA* as defined in Subsection B of this Section, as follows.

a. In a facility being demolished, all the requirements of Subparagraphs F.2.a, b, d, and f, Clauses F.2.c.i and v, and Paragraph F.3 of this Section apply, except when the facility is being demolished under an order by a state or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse as provided in Subparagraph F.1.c of this Section, if the combined the amount of *RACM* is:

- i. at least 60 linear feet on pipes;
- ii. at least 64 square feet on other facility components; or
- iii. at least 27 cubic feet of facility components where the length of area could not be measured previously.

b. In a facility being demolished, only the notification requirements of Subparagraphs F.2.a and b and Clauses F.2.c.ii and v, d.i-vii, ix, xiv and xvii of this Section apply, if ACM is present as Category I in good condition, or if the combined amount of *RACM* is:

- i. less than 60 linear feet on pipes;

ii. less than 64 square feet on other facility components; or

iii. less than 27 cubic feet of facility components where the length of area could not be measured previously.

c. If the facility is being demolished under an order of a state or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse only the requirements of Subparagraphs F.2.a and b, Clause F.2.c.iii, Subparagraph F.2.d (except Clause F.2.d.viii), Subparagraph F.2.f, and Paragraph F.3 (except Subparagraph F.3.a) of this Section apply.

d. If a facility is demolished prior to an inspection or notification, then all debris at the site is categorized as *asbestos-contaminated debris (ACD)*, as defined in Subsection B of this Section unless the owner/operator affirmatively demonstrates there is no RACM in the debris. The owner/operator shall follow the procedures and requirements as provided in Subparagraphs F.2.a, b, d, and f and Clauses F.2.c.i and v of this Section, and shall handle and dispose of the debris in accordance with Paragraph F.3 and Subsection J of this Section.

e. In a facility being renovated, including a response action and any individual nonscheduled renovation operation, all the requirements of Paragraphs F.2 and 3 of this Section apply if:

i. the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is:

(a). at least 60 linear feet on pipes;

(b). at least 64 square feet on other facility components; or

(c). at least 27 cubic feet of facility components where the length of area could not be measured previously.

ii. To determine whether Subclause F.1.e.i.(a), (b), or (c) of this Section applies to planned renovation operations involving individual nonscheduled operations, predict the combined additive amount of RACM to be removed, stripped dislodged, cut, drilled, or similarly disturbed during a calendar year of January 1 through December 31 based on past operating experience.

iii. To determine whether Subclause F.1.e.i.(a), (b), or (c) of this Section applies to emergency renovation operations, including those associated with major fiber release episodes and response actions, estimate the combined amount of RACM to be removed, stripped, dislodged, cut, drilled, or similarly disturbed as a result of the sudden, unexpected event that necessitated the renovation.

f. Owners or operators of demolition and renovation operations are exempt from the requirements of LAC 33:III.5105.A, 5109.E, 5111.A and 5113.A.

g. Residential structures including those with four and fewer dwelling units that are demolished or renovated as part of a commercial or public project, such as urban renewal or highway right-of-way projects, are considered installations and are subject to the provisions of this Subchapter.

h. A person contracted to perform a demolition, renovation, or response action which disturbs RACM or conducts ACDA shall be recognized by the Louisiana State Licensing Board for Contractors to perform asbestos abatement, and shall comply with the requirements of Paragraphs F.2 and 3 of this Section, and shall only use

persons who are trained and accredited in accordance with Subsection P of this Section to conduct asbestos activities in facilities regulated by this Section. The supplying of regulated personnel on an hourly, monthly, or other time basis to another company is considered contracting (i.e., abatement workers, supervisors, air monitoring, or project monitoring personnel).

i. If the activities are emergency demolition operations, all the requirements of Subparagraphs F.2.a, b, d, e, and f, and Paragraph F.3 of this Section apply.

j. When *resilient floor covering*, as defined in Subsection B of this Section, is removed by using dry ice, heat, wet methods, and chemicals where the tiles or sheeting are removed intact (minor tears or minor breakage is acceptable where, for all intents and purposes, the flooring is considered whole), Subparagraphs F.2.a and b, and Clauses F.2.c.vi, d.i-vii, ix, and xvi of this Section apply;

k. Paragraphs F.2 and 3 (except Subparagraph F.3.a of this Section) apply to any ACDA.

1. An asbestos renovation or demolition project, or ACDA shall not begin until an ADVF is issued by the department, except in the case of an emergency.

2. Notification Requirements. Each owner or operator of a demolition, renovation, response action or ACD activity to which this Subsection applies shall:

a. provide the Office of Environmental Services with typed notice of intention to demolish, renovate, conduct a response action, or an ACDA by completing the latest version of Notification of Demolition and Renovation and Asbestos-Contaminated Debris Activity Form, AAC-2, and fees, if applicable. This form is available from the Office of Environmental Services or through the department's website. Delivery of the notice by U.S. Postal Service, commercial delivery service, hand delivery, or email is acceptable. The use of a prior version of the AAC-2 Form is acceptable unless the department has previously provided the owner or operator with notice of or a copy of the current version, or the owner or operator is aware of the latest version.

i. After review of the notification, if the application is incomplete, inaccurate, or the fee is not submitted, a response shall be faxed or emailed to the company indicating the application is incomplete, and processing will be discontinued until all applicable information is completed and submitted to DEQ.

ii. Any unauthorized renovation, demolition, or ACDA project, including those not processed due to incompleteness or inaccurate information on Form AAC-2 is a violation of this Section.

b. Update by highlighting or circling revisions on, a revised Form AAC-2, as necessary, (i.e., when the amount of asbestos affected changes by plus or minus 20 percent) and indicate revised total amount of the entire project in cubic yards), or if there is a change in transporter, contractor, or designated landfill.

c. Postmark or deliver the notice as follows:

i. at least 10 working days before asbestos stripping or removal work or any other activity begins (such as site preparation that would break up, dislodge, or similarly disturb asbestos material), if the activity is a demolition or renovation of a facility where RACM is present as described in Subparagraphs F.1.a-e (except

Clauses F.1.e.iii [nonscheduled operations] and iv [emergency operations]) of this Section;

ii. at least five working days before demolition begins, if a facility is being demolished where no RACM is present or where Category I Nonfriable ACM in good condition is present as described in Subparagraph F.1.b of this Section;

iii. as early as possible before, but not later than the following working day, when the facility is being demolished under an order issued by a state or local government agency because the facility is structurally unsound and in danger of imminent collapse, according to Subparagraph F.1.c of this Section, or if the operation is an emergency renovation described in Clause F.1.e.iv of this Section;

iv. at least 10 working days before the end of the calendar year preceding the year for which notice is being given for renovations described in Clause F.1.e.iii of this Section;

v. for activity covered by Subsection F (except Clauses F.1.e.iii and iv), that will begin on a date other than the one contained in the original notice, notice of the new start date must be provided to the DEQ as follows:

(a). when activity covered by Subsection F will begin after the date contained in the notice (AAC-2 Form):

(i). notify the DEQ regional office responsible for inspecting the project site of the new start date by fax or email as soon as possible before the original start date; and

(ii). provide the Office of Environmental Services with a written notice of the new start date as soon as possible before, and no later than, the original start date. Delivery of the updated notice by U.S. Postal Service, commercial delivery service, fax, email, or hand delivery is acceptable;

(b). when the activity covered by Subsection F will begin on a date earlier than the original start date, submit a revised notification with the new start date. The revised notice shall meet the requirements of Subparagraph F.2.c; and

(c). In no event shall an operation covered by this Subsection begin on a date other than the date contained in the written notice (AAC-2) of the new start date.

v. Notify the DEQ regional office by fax or email three days prior to the start of the removal of *resilient floor covering*, as defined in Subsection B of this Section, by using dry ice, heat, wet methods, and chemicals where the tiles or sheeting are removed intact as provided in Subparagraph F.1.j.

d. In the notice include:

i. an indication of whether the notice is the original, additional, emergency, revised (including canceled), or nonscheduled maintenance operation (annual) notification, the number of ADVFs requested, and/or note if the structure is being demolished under an order of a state or local government agency;

ii. name, address, telephone number, and email address of a contact person of both the facility owner and operator and the asbestos removal contractor owner or operator, with the current DEQ identification number assigned by the administrative authority;

iii. type of operation: demolition, renovation, response action, or ACDA;

iv. a description of the facility or affected part of the facility including the size (square feet and number of floors), age, and present and prior use of the facility;

v. the procedure, including analytical methods, employed to detect the presence of RACM and Category I and Category II nonfriable ACM, or check the "Known or Assumed" box if assumed to be asbestos and no analytical data is provided;

vi. estimate of the approximate amount of RACM to be removed from the facility in terms of length of pipe in linear feet, surface area in square feet on other facility components, or volume in cubic feet if off the facility components. Also, estimate the approximate amount of Category I and Category II nonfriable ACM in the affected part of the facility that will not be removed before the demolition. In the case of asbestos-contaminated debris pile(s), estimate the approximate total volume of the debris to be disposed. Total volume of all RACM and ACD shall be documented in cubic yards;

vii. location and street address (including building number or name and floor or room number, if appropriate), city, parish, and state, of the facility being demolished, renovated, or for ACDA;

viii. scheduled starting and completion dates of asbestos removal work (or any other activity, such as site preparation that would break up, dislodge, or similarly disturb asbestos material) in a demolition, renovation, or ACDA; planned renovation operations involving individual nonscheduled operations shall include the beginning and ending dates of the annual report period as described in Clause F.1.e.iii of this Section;

ix. scheduled starting and completion dates of demolition, renovation, response action, or ACDA;

x. description of planned demolition, renovation work, response action, or ACDA to be performed and method(s) to be employed, including demolition or renovation techniques to be used and description of affected facility components;

xi. description of work practices and engineering controls to be used to comply with the requirements of this Section, including asbestos removal and waste handling emission control procedures;

xii. name, telephone number, mailing address, and physical location of the RAL where the asbestos-containing waste material will be deposited;

xiii. a signed certification that personnel performing the demolition or renovation activity, response action, or ACDA are trained and accredited as required by Subparagraph F.3.h of this Section when RACM is present.;

xiv. for demolitions where no RACM is present, a signed certification stating that no known RACM is present;

xv. for facilities demolished under an order of a state or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse, the name, title, and authority of the state or local government representative who has ordered the demolition, the date that the order was issued, and the date on which the demolition was ordered to begin. A copy of the order shall be attached to the notification;

xvi. for emergency renovations, including emergency renovation operations of an estimated amount of RACM to be removed or stripped as a result of a sudden, unexpected event that necessitated the renovation, the date and hour that the emergency occurred, a description of the sudden, unexpected event, and an explanation of how the event caused an unsafe condition, or would cause equipment damage or an unreasonable financial burden;

xvii. description of procedures to be followed in the event that unexpected RACM is found or Category II nonfriable ACM becomes RACM;

xviii. name, mailing address, telephone number, and DEQ identification number of the solid waste transporter(s) carrying the waste to the RAL and offsite/temporary storage area; and

xix. current ADVF numbers if they have been issued for the project;

e. for emergencies during normal working hours (8:00 a.m. - 4:30 p.m.), provide prompt fax or email notification, to the Office of Environmental Services and DEQ regional office responsible for inspecting the project site. After normal working hours, provide notification by fax, email, or voice mail to the Office of Environmental Services and DEQ regional office responsible for inspecting the project site within 24 hours after learning of the incident that required emergency demolition or renovation operations:

i. the emergency notification shall include the following:

(a). the reason for the emergency;

(b). steps taken to minimize hazards to workers and the public; and

(c). estimated quantities of friable and nonfriable ACM to be handled;

ii. within five working days after the emergency notification is made, a written notification together with required fees as specified in Subparagraphs F.2.a and d of this Section shall be submitted to the Office of Environmental Services in order to obtain an ADVF;

f. use the following procedures in order that the department can trace disposal of ACWM:

i. each properly completed and submitted demolition, renovation, or ACDA notification received by the department that is associated with a project that generates asbestos-containing waste material shall result in issuance of an ADVF with a specific ADVF project number to the owner or operator. The ADVF, or a copy, shall be kept at the facility, except as provided in Subparagraph F.1.1 of this Section, and available for inspection by the department during demolition, renovation, and ACDA. Alterations of the ADVF shall invalidate the ADVF.

ii. the owner or operator of a demolition, renovation, or ACDA shall complete and sign their portion of the valid ADVF, including the quantity shipped in cubic yards, the date the project is scheduled to be completed (or has been completed as applicable), printed name, signed and dated certification, and relinquish the valid ADVF to the waste transporter prior to the off-site shipment;

iii. the waste transporter shall transport the asbestos-containing waste material with the ADVF to a RAL and complete name, dates received and delivered, sign the transporter portion, then relinquish the ADVF to the RAL

site owner or operator at the time the asbestos waste is delivered for burial;

iv. upon receipt from the transporter, the RAL owner or operator shall verify the ADVF, enter the date received, indicate the quantity received in cubic yards, print and sign the disposal facility portion of the ADVF, and mail the original ADVF to the Office of Environmental Services within 30 working days. A copy of the valid ADVF is returned to the waste generator;

v. the ADVF shall expire 90 days from the date of issue. ADVFs for nonscheduled operations shall expire on December 31 of the year for which they are issued;

vi. the ADVF shall be completed in its entirety by the applicable person as indicated in the particular section of the form. Information entered onto the form must be legible;

vii. acceptance of an invalid ADVF by a contractor, waste transporter, or disposal site owner or operator is a violation of this Subchapter; and

viii. all ADVFs that are not used shall be returned by the owner or operator to the Office of Environmental Services within 30 working days after expiration.

3. Procedures for Asbestos Emission Control. Each owner or operator of a demolition, renovation, response action, or ACDA to whom this Section applies, according to Paragraph F.1 of this Section, shall maintain the ADVF on-site, except for the provisions in Subparagraph F.1.1 of this Section and comply with the following procedures.

a. ...

i. it is Category I nonfriable ACM that is not in poor condition and has a low probability that it will become RACM;

ii. ...

iii. it was not accessible for testing and was, therefore, not discovered until after demolition began and, as a result of the demolition, the material cannot be safely removed. If not removed for safety reasons, the exposed RACM and any ACD shall be treated as ACWM and adequately wet at all times until disposed of; and

(a). the RACM and any ACD shall be adequately wet, and contained in leak-tight, clear transparent wrapping; and

(b). the leak-tight, clear transparent wrapping shall be sealed and labeled according to Clause J.1.a.iv of this Section during all loading and unloading operations, transportation, and during storage.

iv. it is Category II nonfriable ACM and the probability is low that the materials will become RACM.

b. – b.ii. ...

c. When RACM is removed during a response action or stripped from a facility component while it remains in place in the facility, adequately wet the RACM prior to and during the response action or the stripping operation. The *work area controls* as defined in Subsection B of this Section shall be employed to prevent the release of ACM to the outside air, and the controlled work area shall, when feasible, be visible to inspectors outside the work area (i.e., transparent window which is easily accessible).

i. In renovation operations, wetting is not required only if:

c.i.(a). – d.(ii). ...

e. For large facility components such as reactor vessels, large tanks, and steam generators, but not beams

(which shall be handled in accordance with Subparagraphs F.3.b, c, and d of this Section), the RACM is not required to be stripped if the following requirements are met:

i. the component is removed, transported, stored, disposed of, or reused without disturbing or damaging the RACM;

ii. the component is encased in a leak-tight, clear, transparent wrapping; and

iii. the leak-tight, clear, transparent wrapping is labeled according to Clause J.1.a.iv of this Section during all loading and unloading operations, transportation, and during storage.

f. - f.iii. ...

iv. RACM contained in leak-tight, clear, transparent wrapping that has been removed in accordance with Subclause F.3.c.i.(a) of this Section need not be wetted provided written authorization from the administrative authority is maintained on site during this exception to the wetting requirements.

g. ...

i. The owner or operator need not comply with Clause F.3.b.i of this Section and the wetting provisions of Subparagraph F.3.c of this Section, provided written authorization from the administrative authority is maintained on-site during this exception to the wetting requirements.

ii. - iii. ...

h. No response action shall be conducted at a facility regulated by this Section unless at least one asbestos abatement contractor/supervisor is physically present. All asbestos abatement workers who are performing response actions shall be supervised by an asbestos contractor/supervisor. Evidence of the required training shall be made available for inspection by the administrative authority at the demolition or renovation site. Evidence of required training shall include, but not be limited to, the appropriate training certificates, DEQ issued identification card or accreditation certificates. For contracted abatement personnel, evidence of accreditation shall be made available for inspection by the administrative authority at the demolition, renovation, response action, or ACDA site.

i. ...

j. If a facility or residential structure is demolished by intentional burning, including activities related to the training of fire personnel, testing firefighting materials, or equipment, all RACM including Category I and Category II nonfriable ACM shall be removed in accordance with this Section before burning.

k. There shall be no discharge of asbestos contaminated liquids from the demolition, renovation, response action, or ACDA which are contaminated with asbestos material if it is reasonably anticipated that such asbestos may become airborne.

l. Prior to completion of a renovation, demolition, ACDA, or response action involving RACM, the work area (described area where the renovation, demolition, response action, or ACDA occurs) shall be cleaned by:

i. - ii. ...

m. Within 24 hours after the demolition, renovation, response action, or ACDA has ended and the work area has been cleaned in accordance with Subparagraph F.3.l of this Section, notify by fax or email the DEQ regional office responsible for inspecting the project site of the conclusion

of the cleanup. Only after the DEQ has been notified of project completion will the abatement activity be complete.

n. After completion of a demolition activity, where no load-supporting structural member of a facility is left, no asbestos-containing floor covering shall remain on surfaces where the material has the potential to become RACM.

G. - I.6. ...

J. Standard for Waste Disposal for Manufacturing, Fabricating, Demolition, Renovation, Major Fiber Release Episodes, ACDA, Response Actions, and Spraying Operations. Each owner or operator of any source covered under the provisions of Subsection E, F, or G of this Section shall comply with the following provisions.

1. Avoid crushing the ACWM and discharge no visible emissions to the outside air during collection, processing (including incineration), packaging, or transporting or deposition of any asbestos-containing waste material generated by the source, and use one of the emission control and waste treatment methods specified in Subparagraphs J.1.a-d of this Section.

a. - a.ii. ...

iii. after wetting, seal all asbestos-containing waste material in leak-tight, clear, transparent containers (i.e., bags) while wet; or, for materials that will not fit into containers without additional breaking, put materials into leak-tight, clear, transparent wrapping, ensuring that the ACWM is securely wrapped and sealed. If utilizing plastic drums to contain ACM, the transparent wrapping requirement is not necessary. If drums are used to store bagged material, the bags must be transparent;

iv. label the containers or wrapped materials specified in this Subsection using warning labels specified by Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration (OSHA) under the OSHA asbestos construction standard, 29 CFR 1926.1101. The labels shall be printed in letters of sufficient size and contrast so as to be readily visible and legible;

v. ...

vi. store all wrapped and contained asbestos-containing waste material in a labeled, secured area away from the public, where it will not be subject to disturbance or tampering until it can be transported to a waste disposal site recognized by the department. For the purposes of this Subchapter, ACWM shall be disposed of in appropriate solid waste facilities as follows.

(a). RACM shall be disposed of in an industrial or municipal solid waste landfill (Type I or Type II), or a hazardous waste landfill permitted by the department to accept RACM.

(b). Category II nonfriable ACM shall be disposed of in an industrial or municipal solid waste landfill (Type I or Type II) permitted by the department to accept Category II nonfriable ACM.

(c). Category I nonfriable ACM may be disposed of in a construction/debris landfill (Type III) permitted by the department to accept ACM.

[Note: Although landfills are permitted to accept asbestos wastes, a landfill should be contacted prior to transport to the solid waste facility to verify that the ACWM will be accepted and whether the facility has other requirements prior to disposal at that location.]

b. - b.ii. ...

c. For facilities demolished where the RACM is not removed prior to demolition according to Clauses F.3.a.i, ii, iii, and iv of this Section or for facilities demolished according to Subparagraph F.1.c or d of this Section, avoid crushing the ACM and adequately wet asbestos-containing waste material at all times prior to, during, and after demolition and keep wet during handling, storage, and loading for transport to a disposal site. Asbestos-containing waste materials covered by this Subparagraph shall be sealed in leak-tight containers or leak-tight, clear transparent wrapping then transported and disposed of at a Type I or Type II landfill permitted by the department to accept RACM.

d. Use an alternative emission control and waste treatment method that has received prior written approval by the administrative authority according to the procedure described in Subparagraph I.3.b of this Section.

e. As applied to demolition and renovation, the requirements of Paragraph J.1 of this Section do not apply to Category I and Category II nonfriable ACM waste that did not become RACM prior to or during the course of removal, storage, transportation, and disposal.

2. All asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at:

a. ...

b. an approved site that converts RACM and ACWM into nonasbestos (asbestos-free) material according to the provisions of Subsection L of this Section;

c. the requirements of Paragraph J.2 of this Section do not apply to Category I nonfriable ACM that is not RACM.

3. Mark vehicles used to transport ACWM during the storage, loading, and unloading of waste so that the signs are visible. The markings shall conform to the requirements in Clauses I.4.a.i, ii, and iii of this Section.

4. For all ACWM transported off the facility site:

a. the owner, operator, and transporter shall maintain waste shipment records, using an ADVF Form, and include the following information:

i. the name of the waste generator, DEQ identification number, physical address, and project location of the demolition, renovation, major fiber release episode, response action, or ACDA;

ii. the name and address of the administrative authority responsible for administering the asbestos Louisiana Emission Standards for Hazardous Air Pollutants (LESHAP) program;

iii. the name, address, and telephone number of the contractor;

iv. the name of the transporter and the DEQ identification number;

v. the date the waste was transported from the project site location;

vi. the approximate quantity of the ACWM shipped, in cubic yards;

vii. the name and telephone number of the disposal facility owner or operator;

viii. a certification that the contents of this consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for

transport by highway according to applicable international and government regulations;

J.4.b. - K.2.c. ...

3. the owner or operator may use an alternate control method that has received prior approval by the administrative authority rather than comply with the requirements of Paragraph K.1 or 2 of this Section;

4. - 5.b....

c. the site is subject to LAC 33:III.Chapter 51.Subchapter M.

L. - M.3....

4. for sources subject to Subsections I and J of this Section:

a. ...

b. the average volume of asbestos-containing waste material disposed of, measured in yd³/day;

M.4.c. - N.2.c. ...

3. At the end of each operating day, or at least once every 24-hour period while the site is in continuous operation, the asbestos-containing waste material that has been deposited at the site during the operating day or previous 24-hour period shall:

a. be covered with at least 6 inches of compacted nonasbestos-containing waste material; or

b. ...

4. Rather than meet the no visible emission requirement of Paragraph N.1 of this Section, use an alternative emissions control method that has received prior written approval by the administrative authority according to the procedures of Subparagraph I.3.b of this Section.

5. For all asbestos-containing waste material received, the owner or operator of the active waste disposal site shall:

a. maintain waste shipment records using the ADVF form and including the following information:

a.i. - ii. ...

iii. the quantity of asbestos-containing waste material in cubic yards;

iv. the presence of improperly enclosed or uncovered waste, or any asbestos-containing waste material not sealed in leak-tight containers. Report in writing to the administrative authority identified in the ADVF, by the following working day, the presence of a significant amount of improperly enclosed or uncovered waste. Submit a copy of the ADVF along with the report; and

v. the date buried;

b. - d. ...

6. Maintain, until closure, records of the location, depth and area, and quantity in cubic yards of ACWM within the disposal site on a map or diagram of the disposal area.

N.7. - O.4.c. ...

P. Training and Accreditation Requirements

1. Asbestos Discipline

a. Worker. A person shall be trained as a worker in accordance with LAC 33:III.2799.Appendix A—Agent Accreditation Plan, Paragraph B.5 to perform response actions, maintenance activities that disturb RACM, renovations, demolitions, and ACDA in a facility or site regulated by this Section.

b. Contractor/Supervisor. A person shall be trained as a contractor/supervisor in accordance with LAC 33:III.2799.Appendix A—Agent Accreditation Plan, Paragraph B.4 to supervise response actions, maintenance

activities that disturb RACM, renovations, demolitions, and ACDA in a facility or site regulated by this Section:

c. Inspector. A person shall be trained as an inspector in accordance with LAC 33:III.2799.Appendix A—Agent Accreditation Plan, Paragraph B.1 and accredited in order to inspect for asbestos materials in facilities regulated by this Section.

d. Air Monitor Personnel. A person shall be trained as an asbestos contractor/supervisor in accordance with LAC 33:III.2799.Appendix A—Agent Accreditation Plan, Paragraph B.4 to conduct air monitoring for an asbestos abatement project or related activity in facilities regulated by this Section.

2. Contracted Personnel

a. When RACM is disturbed in any manner, including removal, encapsulation, enclosure, maintenance, or repairs by contracted personnel, those persons shall be accredited by DEQ in accordance with LAC 33:III.2799.Appendix A – Agent Accreditation Plan in one of the applicable disciplines: worker, contractor/supervisor, inspector, and air monitor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), repealed and repromulgated LR 18:1121 (October 1992), amended LR 20:1277 (November 1994), LR 24:27 (January 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2462 (November 2000), LR 30:1673 (August 2004), amended by the Office of Environmental Assessment, LR 30:2022 (September 2004), LR 31:1570 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2449 (October 2005), LR 33:2095 (October 2007), LR 34:1893 (September 2008), amended by the Office of the Secretary, Legal Division, LR 39:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

This Rule has no known impact on poverty as described in R.S. 49:973.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ330. Such comments must be received no later than June 5, 2013, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to deidra.johnson@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ330. These proposed regulations are available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street,

Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Public Hearing

A public hearing will be held on May 29, 2013, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

Herman Robinson, CPM
Executive Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Emission Standard for Asbestos (Demo/Reno)

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no implementation costs or savings to state or local government units as a result of the proposed Rule. The Rule is being amended to clarify reporting and disposal requirements for asbestos projects and to more clearly define when floor tiles are regulated. The Rule also incorporates Environmental Protection Agency rulings related to asbestos projects over the past several years so that the regulated community knows what is required to be in compliance. The amendments also removed redundant language related to schools and state buildings and training requirements. .

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect on competition and employment related to this Rule change.

Herman Robinson, CPM
Executive Counsel
1304#053

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Cemetery Board

Cemetery Industry (LAC 46:XIII.Chapters 1-25)

The Office of the Governor, Louisiana Cemetery Board, proposes to adopt LAC 46:XIII.101 et seq., as authorized by R.S. 8:67. These proposed rules are promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Louisiana Cemetery Board was created by Acts 1974, No. 417. The majority of the rules adopted pursuant to Acts 1974, No. 417, were promulgated in 1975 and 1982. Thus, the current rules do not reflect nearly thirty-years-worth of legislative changes and amendments to the Louisiana Cemetery Act. The current proposed rules are intended to replace the existing rules in their entirety, but retain much of the substance of the existing rules. In addition, the proposed rules contain updates to the existing rules to reflect legislative enactments and amendments since the original promulgation events in 1975 and 1982. Finally, the proposed rules incorporate existing policies into the rules of the Louisiana Cemetery Board and correct technical and grammatical errors in the original rules.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XIII. Cemetery Industry

Chapter 1. General Provisions

§101. Authority

A. These rules are adopted and promulgated by authority of, and in accordance with, the Administrative Procedure Act, R.S. 49:950 et seq.; and the Louisiana Revised Statutes, Title 8, less and except the Louisiana Unmarked Human Burial Sites Preservation Act, as those laws may from time to time be amended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:519 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§103. Definitions

A. There is incorporated herein by reference all of the definitions set forth and contained in R.S. 49:950 et seq. and in Title 8, Louisiana Revised Statutes. The following words and terms, when used in these rules, shall have the following meanings.

Administrative Procedure Act—R.S. 49:950 et seq., as the same may from time to time be amended.

Board—the Louisiana Cemetery Board.

Fair Market Value—the undiscounted price of a comparable cemetery space, right of interment, merchandise, service, or product in the same cemetery.

Gross Sales Price Received—the price of a cemetery space, a right of interment, merchandise, service, or product before the application of any discount, rebate, or promotional offer.

Interment Space—cemetery space as that term is defined in R.S. 8:1.

Located in Louisiana—registered with the Louisiana Secretary of State to do business in Louisiana.

Non-Willful Violation—an unintentional or negligent error resulting in a violation of Title 8 or the rules of the board. A non-willful violation is one that represents a failure to exercise the degree of care that someone of ordinary prudence would have exercised in the same circumstances.

Other Property Used or Intended to be Used for the Interment of Human Remains—shall include, but not be limited to:

- a. cremation benches;
- b. cremation boulders;
- c. memorial niches;
- d. copings; or

e. other property that encloses or contains human remains.

Presiding Officer—the chair of the Louisiana Cemetery Board or a member of the Louisiana Cemetery Board appointed to preside over a proceeding to be conducted by the board.

Title 8 or Louisiana Cemetery Act—the Louisiana Revised Statutes, Title 8, less and except the Louisiana Unmarked Human Burial Sites Preservation Act, as that law may from time to time be amended.

Wholesale Cost—the price, exclusive of any discounts or rebates, paid to a supplier, vendor, or manufacturer for merchandise or personal property.

Willful Violation—a knowing, voluntary, or intentional violation of Title 8 or the rules of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:519 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

Chapter 3. Organization

§301. Officers of Board

A. The officers of the board shall be a chair, a vice-chair, and a secretary-treasurer. The board may designate and elect such other officers as it shall determine. All officers shall be elected from among the members of the board, and shall perform such duties as shall be prescribed by the board.

B. Officers shall be elected to serve for a period of one year or until their successors are elected. Their term of office shall begin at the close of the meeting at which they are elected.

C. No member shall hold more than one office at a time, except that one member may serve as secretary-treasurer. An officer may serve consecutive terms.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:64 and R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:519 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§303. Meetings; Quorum

A. Regular meetings of the board shall be held at least twice a year, at such times and places as shall be determined by the board. Special meetings may be called by the chair or the board's designee and shall be called upon the written request of any three members of the board.

B. Written notice of all meetings shall be sent by the secretary or the board's designee to each member of the board.

C. Four members of the board shall constitute a quorum.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:65 and R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§305. Committees

A. The executive committee shall consist of the officers of the board.

B. There shall be the following standing committees:

1. examination and inspection committee;
2. rules committee;
3. consumer complaints committee.

C. Such other committees, standing or special, shall be appointed by the board or by the chair of the board, as the board or the chair shall from time to time deem necessary to

carry on the work of the board. All appointments to committees, standing or special, other than the executive committee, shall be made by the chair. The chair shall be an ex officio member of all committees, and as such, he shall have the same rights as the other committee members, including the right to vote, but he shall not be counted in determining whether a quorum is present.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§307. Parliamentary Authority; Order of Business

A. The rules contained in the current edition of *Roberts Rules of Order* shall govern the conduct of the board meetings and proceedings. The board may vary, modify, or deviate from such rules of order whenever it shall deem it necessary or advisable to do so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§309. Computation of Time

A. In computing a period of time allowed or prescribed by these rules, by law or by order of the board, the date of the act, event or default after which the period begins to run is not to be included. The last day of the period is to be included, unless it is a legal holiday or a day of the weekend, in which event the period runs until the end of the next day which is not a legal holiday or a day of the weekend.

B. A half-holiday is considered as a legal holiday. A legal holiday or day of the weekend is to be included in the computation of a period of time allowed or prescribed, except when:

1. it is expressly excluded;
2. it would otherwise be the last day of the period; or
3. the period is less than seven days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§311. Amendment of Rules

A. These rules may be amended, and any such amendments shall become effective, in accordance with and as provided by the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§313. Appearances

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67, R.S. 8:68 and R.S. 8:71.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975), repealed by the Office of the Governor, Cemetery Board, LR 39:

§315. Formal Requirements for Pleadings

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67, R.S. 8:68 and R.S. 8:71.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), repealed by the Office of the Governor, Cemetery Board, LR 39:

§317. Statutory References in Pleadings

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67, R.S. 69.1, R.S. 8:68 and R.S. 8:71.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), repealed by the Office of the Governor, Cemetery Board, LR 39:

§319. Ex Parte or Emergency Relief

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67 and R.S. 8:68.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), repealed by the Office of the Governor, Cemetery Board, LR 39:

Chapter 5. Rulemaking Procedure

§501. Proceedings by the Board

A. The board may initiate proceedings for the promulgation, amendment, or repeal of any rule. Such proceedings shall be conducted in accordance with the Administrative Procedure Act.

B. The board will maintain a list of persons who have made timely requests for advance notice of its rulemaking proceedings, and will give notice to such persons by certified mail pursuant to the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Louisiana Cemetery Board, LR 1:521 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§503. Initiation of Proceedings by Interested Persons

A. Any interested person may petition the board requesting the adoption, promulgation, amendment, or repeal of a rule. The petition shall be filed by mailing same to the board at its administrative office in the parish of Jefferson.

B. A petition filed in accordance with this Section shall contain the following:

1. the names and addresses of the petitioners;
2. the names and addresses of the attorneys, if any, of petitioners;
3. all pertinent allegations of fact, views, arguments and reasons supporting the action sought by the petition;
4. a statement or prayer expressing the action sought by the petition.

C. After submission of a petition under this Chapter 5, the board shall either deny the petition in writing, stating the reasons for the denial, or shall initiate rulemaking proceedings, in accordance with the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

Chapter 7. Certificate or License

§701. Applications

A. All applications for any certificate of authority or license shall be submitted to and filed with the board at its administrative office in the parish of Jefferson, and must be accompanied by the charge, fee, or other sum provided for in

the Louisiana Cemetery Act. Payment of such charge, fee, or other sum shall be by check or money order made payable to the Louisiana Cemetery Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§703. Application for Exempt Status

A. Each cemetery authority or person seeking an exemption under R.S. 8:78 shall make an application in the manner prescribed by the board. Such application shall include a complete explanation justifying the exemption.

B. Upon the board's determination that a cemetery authority or person meets the qualifications for an exemption, the board may issue an exempt certificate of authority to said cemetery upon completion of an application and the submission of required documentation, as required by the board.

C. Every cemetery authority and every person who has been determined by the board to be exempt shall immediately notify the board of any change of fact, circumstance, condition, status, or mode of operation which might affect the board's determination. The board may, from time to time, require submission of such information as it may deem necessary to determine if a cemetery authority or person continues to meet the qualifications for an exemption. If the board determines that a previously-exempt cemetery authority or person no longer meets the qualifications for such an exemption, such cemetery authority or person shall immediately begin the process of applying for a certificate of authority.

D. If a cemetery authority or person is determined to be exempt, the cemetery authority or person must, nonetheless, comply with all applicable provisions of Title 8.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:

§705. Forms and Instructions

[Formerly §703]

A. The applicant shall prepare and file all applications on the forms prescribed by the board and in accordance with the instructions issued by the board.

B. The forms and instructions shall be prescribed by the board and shall contain such instructions and require such information as the board may find useful.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§707. Other Provisions Concerning Certificate or License

[Formerly §705]

A. A certificate of authority or license shall be valid for the period of time stated thereon unless it shall have been sooner suspended or revoked. Each certificate of authority for the operation of a cemetery must be displayed on the premises of the cemetery authority, and each license for the conduct of other businesses shall be exhibited on reasonable request.

B. A certificate of authority or license provided for by the Louisiana Cemetery Act shall be nontransferable.

C. Prior to the issuance of a certificate of authority to a newly established cemetery the board may require the submission of minimum development plans, including, but not limited to, maps and plats and a development schedule for any roads and non-interment structures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:522 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§709. Refusal to Grant or Renew Certificate of Authority or License

[Formerly §707]

A. If the board refuses to grant or renew any certificate of authority, it shall give the applicant written notice of its decision, with the reasons therefor. The applicant shall have 30 days after receipt of notice of the decision in which to initiate an adjudication proceeding. If no such proceeding is initiated, the action of the board shall be final.

B. If the board refuses to renew any license to engage in the business of a cemetery sales organization or a cemetery management organization, it shall give the applicant written notice of its decision, with the reasons therefor. The applicant shall have 30 days after receipt of notice of the decision in which to initiate an adjudication proceeding. If no such proceeding is initiated, the action of the board shall be final.

C. The board may require the applicant to pay the costs of the adjudication proceeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:522 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§711. Revocation or Suspension of Certificate of Authority

[Formerly §709]

A. Upon receipt of information that may constitute grounds for revocation, suspension, annulment, or withdrawal of a certificate of authority, the board shall comply with the provisions of Title 8, Administrative Procedure Act, and these rules regarding the revocation, suspension, annulment, or withdrawal of any certificate of authority, and particularly but without limitation, R.S. 49:961.

B. A holder of a certificate of authority shall have 30 days from receipt of the notice required by R.S. 49:961(C) in which to show compliance with all lawful requirements for the certificate of authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:522 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

Chapter 9. Cemetery Records and Documents

§901. Records Required to be Maintained

A. Every cemetery or cemetery authority, whether holding a certificate of authority or not, shall maintain accurate, complete, legible, and permanent records of any books, contracts, records, or documents pertaining to,

prepared in, or generated by, the cemetery including, but not limited to:

1. forms, including, but not limited to:
 - a. contracts and deeds;
 - b. titles; and
 - c. certificates of interment rights;
 2. reports;
 3. accounting records;
 4. ledgers;
 5. electronic records;
 6. cemetery space ownership records;
 7. interment records;
 8. maps and plats;
 9. current and historic price lists;
 10. current and historic rules of the cemetery, if any;
- and
11. trust records.

B. The records referenced in this Section shall be known as “records pertaining to the operation and business of a cemetery.”

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:

§903. Records to be Transferred

A. Upon the change of ownership or control of a cemetery or cemetery authority, the records referenced in Section 901 shall be provided to the transferee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:

§905. Access to Records

A. All records pertaining to the operation and business of a cemetery shall be available for inspection by the board at any time during regular business hours. The records shall be available for inspection at the cemetery or at a location designated by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:

§907. Permanency of Records

A. All records pertaining to the operation and business of a cemetery shall be preserved until the obligation pursuant thereto is fulfilled. Following the fulfillment of any obligation, these records shall be subject to the retention schedule set forth in Subsections B and C of this Section.

B. The following records pertaining to the operation and business of a cemetery shall be permanently preserved:

1. contracts and deeds, titles, and certificates of interment rights;
2. cemetery space ownership records;
3. interment records;
4. maps and plats; and
5. current and past rules and regulations of the cemetery, if any.

C. The following records pertaining to the operation and business of a cemetery shall be preserved for a minimum of seven years, unless otherwise directed by the board:

1. reports;
2. accounting records;
3. trust records;

4. ledgers;
5. electronic records; and
6. current and past price lists.

D. The records required by this Chapter shall be either:

1. in the form of the original record; or
2. electronically, subject to the following requirements:
 - a. any and all electronic records must be able to be easily reproduced in a legible format; and
 - b. any and all electronic records must be accessible for the purposes of examination by the board pursuant to Title 8 and the rules of the board;
 - c. at the request of the board, cemeteries or cemetery authorities maintaining electronic records shall provide, at their expense, hard copies of any records for the board’s examination.

E. All records, including electronic records, pertaining to ownership, interments, maps, and plats shall be adequately protected from destruction by fire in one or more of the following manners:

1. by duplicate records stored at a separate location; or
2. by storing the originals in a fireproof container.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:

§909. Written Contracts Required

A. All contracts for cemetery spaces, interment rights, or cemetery related merchandise and services shall be in writing and written in clear and understandable language. All such contracts shall be sequentially numbered and entered into a sales journal numerically.

B. All contracts under Subsection 909.A shall include the following mandatory information:

1. date of the contract;
2. name of the seller and purchaser;
3. statement that the cemetery is perpetual care, if applicable;
4. the location of the interment space;
5. an itemization of the prices charged, including any applied discounts, for each item provided as part of the contract;
6. the terms under which each contract is to be paid; and
7. the clear terms for cancellation of the agreement and the damages for cancellation, if any.

C. All contracts for cemetery spaces or interment rights shall also include:

1. the cost of the cemetery space or interment right(s);
2. the type of interment to be provided and the number of interments allowed. Nothing in this Section shall be interpreted to limit the ability of a cemetery authority to sell or allow multiple interments, as permitted by the cemetery authority’s rules;
3. the actual amount to be placed in the cemetery’s perpetual or endowed care trust; and
4. a statement regarding whether the payment for the cemetery space(s) or interment right(s) includes or does not include the cost of opening and closing of the cemetery space.

D. All contracts for cemetery related merchandise and services shall also include:

1. the price of each item of merchandise or service contracted for;

2. a statement regarding whether the merchandise will be delivered or stored pursuant to R.S. 8:502.1;

3. if the merchandise will not be delivered or stored pursuant to R.S. 8:502.1, then the agreement shall state the amount to be placed in the cemetery's merchandise trust fund;

4. a description of each item of merchandise or service with sufficient information to describe the merchandise or service, including the materials used in construction, size, design, and manufacture.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67 and R.S. 8:206.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:

§911. Contents of Answer

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975), repealed by the Office of the Governor, Cemetery Board, LR 39:

§913. Default in Answering or Appearing

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975), repealed by the Office of the Governor, Cemetery Board, LR 39:

§915. Leave to Intervene Necessary

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:524 (December 1975), repealed by the Office of the Governor, Cemetery Board, LR 39:

§917. Prehearing Conference

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:524 (December 1975), repealed by the Office of the Governor, Cemetery Board, LR 39:

§919. Hearing

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67 and R.S. 8:68.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:524 (December 1975), repealed by the Office of the Governor, Cemetery Board, LR 39:

§921. Adjudication Procedure

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), repealed by the Office of the Governor, Cemetery Board, LR 39:

§923. Judicial Review of Adjudication

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), repealed by the Office of the Governor, Cemetery Board, LR 39:

§925. Informal Proceedings Authorized

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), repealed by the Office of the Governor, Cemetery Board, LR 39:

Chapter 11. Proceedings other than Rulemaking; General Procedural Rules

§1101. Proceedings by the Board

[Formerly §901]

A. Proceedings initiated by the board, except for the promulgation, amendment or repeal of a rule, shall be commenced by the issuance of an order to show cause directed to the respondent. Such order shall state the acts, conduct, or the failure or omission to act alleged to be contrary to or in violation of any provision of law or of any of the lawful rules, regulations, orders, decisions or opinions issued, rendered and/or promulgated by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:66 and R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:522 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§1103. Proceedings by Persons other than the Board

[Formerly §903]

A. Any person desiring to initiate adjudication proceedings, except for the promulgation, amendment or repeal of a rule, and who is entitled or required by law to do so shall prepare and file with the board a petition in the form and content as set forth in Subsection 503.B of these rules and including, whenever applicable and possible, particular reference to the statute, rule, regulation, order, decision or opinion involved.

B. Any person desiring to initiate adjudication proceedings, except for the promulgation, amendment or repeal of a rule, but who is not entitled or required by law to do so shall prepare and file with the board a petition which shall meet the requirements of Subsection 1103(A). If the board shall determine that the petition is filed in good faith, that the petitioner would be entitled to relief if the allegations of his petition are established and that such allegations otherwise justify the initiation of adjudication proceedings, the board shall initiate adjudication proceedings in accordance with these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:522 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§1105. Notice

[Formerly §905]

A. Upon the issuance of an order to show cause by the board, or upon the initiation of adjudication proceedings pursuant to a petition filed by any person in accordance with these rules, the board shall issue a notice in conformity with the provisions of R.S. 49:955.

B. The hearing set by such notice shall be fixed not less than 20 days from the date of such notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67 and R.S. 8:68.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§1107. Service of Notice; Pleadings, and other Documents

[Formerly §907]

A. Service of such notice, and of all pleadings, decisions, orders, and other papers and documents shall be made, and shall be deemed valid if made, by delivering one copy to each party or his attorney of record in person or depositing it in the United States mail, first class, postage prepaid, certified or registered mail, return receipt requested, directed to the party or his attorney of record at his post office address. Service by mail shall be deemed complete at the date of mailing. Notwithstanding the foregoing, the parties may mutually agree to another method of service acceptable under the *Louisiana Code of Civil Procedure*.

B. Unless otherwise provided, when any party has appeared through an attorney, service upon such attorney shall be deemed valid service upon the party until written notice of dismissal of such attorney is received by the board and served on all parties of record to the proceeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§1109. Answer or Appearance

[Formerly §909]

A. A respondent may file his answer or other appearance personally or through an attorney not later than five days before the date fixed for the hearing.

B. The filing of an answer or other appearance by an attorney constitutes an appearance by the party for whom the pleading is filed, and also constitutes an appearance of the attorney on behalf of such party. An attorney who has appeared on behalf of a party may withdraw from any proceeding upon good cause shown to the board and upon written notice to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§1111. Appearances

[Formerly §313]

A. No person, except an individual appearing on his own behalf or as a representative or witness on behalf of a party, shall be permitted to participate in any proceeding before the board unless such person is represented by an attorney of this state in good standing.

B. Any attorney or counselor from any other jurisdiction, of good standing there, may, at the discretion of the board be admitted, pro hac vice, to associate with an attorney of this state in a proceeding and to participate therein in the same manner as an attorney of this state, provided, however, that all pleadings, briefs, and other papers filed with the board in such matters shall be signed by an attorney authorized to practice in this state who shall be held responsible for them and who shall be present at all times during the proceeding unless excused by the presiding officer.

C. Any person appearing before or transacting business with the board in a representative capacity may be required by the board or the presiding officer to file evidence of his authority to act in such capacity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§1113. Formal Requirements for Pleadings

[Formerly §315]

A. All pleadings shall be printed or typewritten and shall be prepared on either letter size or legal size paper.

B. All pleadings must be signed in ink by the party or attorneys of record, if any.

C. All pleadings initiating a proceeding or otherwise seeking affirmative relief and all petitions of intervention shall be verified, except for those matters initiated or petitions or orders to show cause brought by the board or upon the motion of the attorney general of the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§1115. Statutory References in Pleadings

[Formerly §317]

A. All pleadings shall cite, by appropriate reference, the statutory provision or other authority under which the board's action is sought, and shall refer to any statutes, rules, regulations, decisions, orders, and/or opinions, germane to the particular matter or proceeding involved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§1117. Ex Parte or Emergency Relief

[Formerly §319]

A. If a petition or other pleading filed by a person other than the board seeks ex parte action or the granting of emergency relief pending full hearing, it shall set forth the necessity or emergency for such requested action and must be supported by affidavits to make a prima facie case.

B. The chair may take any such emergency action as they deem appropriate in their sole discretion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§1119. Contents of Answer

[Formerly §911]

A. The answer shall:

1. conform to the requirements for answers under the *Louisiana Code of Civil Procedure*;

2. contain a specific detailed statement of any affirmative defense or matter in extenuation or mitigation;

3. contain a clear and concise statement of the facts and matters of law relied upon constituting the grounds of the defense or the basis for extenuation or mitigation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§1121. Default in Answering or Appearing
[Formerly §913]

A. In the event of the failure of a respondent to answer or otherwise appear within the time allowed, and provided that these rules relative to service and notice have been complied with, such respondent failing to answer or otherwise appear shall be deemed to be in default. At the time fixed for the hearing, the party initiating the proceeding shall present its evidence and in due course, and after due consideration of all of the pleadings, evidence and the entire record, the board shall render its decision or issue its order or ruling, as appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§1123. Leave to Intervene Necessary
[Formerly §915]

A. Persons, other than the original parties to any proceeding, whose interests are to be directly and immediately affected by the proceeding, shall secure an order granting leave to intervene before being allowed to participate, provided that the granting of leave to intervene in any proceeding shall not be construed to be a finding or determination by the board for purposes of judicial review or appeal.

B. A petition for leave to intervene must clearly identify the proceedings in which the intervention is sought, must set forth the name and address of the petitioner for intervention, and must contain a clear and concise statement of the direct and immediate interest of the petitioner in such proceeding, stating the manner in which such petitioner will be affected by such proceeding, outlining the matters and things relied upon by such petitioner as a basis for his request to intervene, and if affirmative relief is sought, the petition must contain a clear and concise statement of the relief sought and the basis thereof.

C. A petition to intervene and adequate proof of service of a copy thereof on all parties of record to the proceeding shall be filed not less than 10 days prior to the commencement of the hearing. For good cause shown, the board shall allow a petition of intervention to be filed not later than the time of the hearing.

1. If such petition to intervene is not filed in accordance with these rules, such petition will not be considered.

2. If a petition to intervene shows direct and immediate interest in the subject matter of the proceeding or any part thereof, and does not unduly broaden the issues, the board may grant leave to intervene or otherwise appear in the proceeding with respect to the matters set out in the intervening petition, subject to such reasonable conditions as may be prescribed.

3. If it appears during the course of a proceeding that an intervenor has no direct or immediate interest in the proceeding, and that the public interest does not require participation by such intervenor therein, the board may dismiss such intervenor from the proceeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:524 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§1125. Prehearing Conference
[Formerly §917]

A. The chair or the chair's appointee may, of their own volition, or upon the motion of any party of record, hold a prehearing conference for the purpose of formulating or simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits or prepared expert testimony, limiting the number of witnesses, and considering such other matters as may expedite the orderly conduct and disposition of the proceeding, or the settlement thereof.

B. The action taken at such prehearing conference, including without limitation, all the agreements, admissions, and/or stipulations made by the parties concerned, shall be made a part of the record. Such action shall control the subsequent course of the proceeding, unless otherwise stipulated by all parties of record with the consent of the chair or the chair's appointee.

C. In any proceeding, the chair or the chair's appointee may, in its discretion, call all parties together for a conference prior to the taking of testimony, or may recess a hearing, after it has commenced, for the purpose of holding a conference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:524 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§1127. Hearing

[Formerly §919]

A. At the date, time and place fixed for the hearing, the board shall hear all matters presented in connection with the proceeding pending before it. The hearing shall be conducted by the chair or the chair's appointee. The board and all other parties may be represented by counsel.

B. Opportunity shall be afforded all interested persons to respond and present evidence on all issues of fact involved and arguments on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

C. The chair or the chair's appointee conducting any proceeding subject to these rules shall have the power to direct, control and regulate the order, procedure and course of the hearing, including, but not limited to, opening statements, the order and method of presentation of testimony and evidence by all parties, and closing statements. The chair or the chair's appointee shall have the further power to set the time and place for continued or recessed hearings, fix the time for filing of memoranda and other documents, and generally to do all things necessary and proper for the conduct of a full and fair hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:524 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§1129. Adjudication Procedure
[Formerly §921]

In the conduct of adjudication the board shall conform to and comply with, and shall conduct such adjudication in accordance with, the applicable provisions of the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§1131. Judicial Review of Adjudication
[Formerly §923]

A. Judicial review of a final decision or order in adjudication proceedings shall be in accordance with, and is governed by, the Administrative Procedure Act.

B. The party seeking such judicial review shall cause to be prepared, and shall transmit to the reviewing court, the original or a certified copy of the entire record of the proceeding under review. All costs of preparing and transmitting the record for review shall be borne by the party prosecuting such appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§1133. Informal Proceedings Authorized
[Formerly §925]

A. Nothing in these rules shall be construed as prohibiting the board from holding informal proceedings, hearings, or conferences for the purpose of aiding the board in ascertaining and determining facts necessary for the performance of its duties. Any person who is aggrieved by any action or determination of the board following such an informal proceeding, hearing, or conference, and who is otherwise entitled thereto, may file a petition requesting the promulgation, amendment, or repeal of a rule, or may file a petition to initiate an adjudication proceeding, under applicable provisions of these rules. Such petitions for exercise of the rulemaking process or for adjudication shall be handled by the board de novo.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§1135. Fine Schedules for Willful and Nonwillful Violations of the Louisiana Cemetery Act

A. The board, at its discretion, after notice and hearing as required by the Administrative Procedure Act, and in lieu of a complete suspension or complete revocation of a certificate of authority or a license, may impose fines for violations of Title 8 and the rules of the board according to the following fine schedule.

B. By agreement of the board and a party alleged to have violated the Louisiana Cemetery Act, a hearing pursuant to Title 8 and the Administrative Procedure Act may be waived and the parties may enter into a consent agreement, stipulating to the facts and law applicable to the alleged violation. In the event that such an agreement is reached, the following fine schedule may apply to each of the enumerated violations.

C. Each willful or nonwillful act shall constitute a separate violation for the purposes of imposing the fines set forth in the following schedule.

D. The schedule of fines shall in no event be less than as follows.

1. For each willful violation:

Violation	Minimum fine	Maximum fine
Failure to maintain records pertaining to the operation and business of a cemetery	\$500 per violation	\$10,000 per violation
Operating without a valid, subsisting, and unsuspended certificate of authority	\$500 per violation (each interment is a violation)	\$10,000 per violation
Failure to timely make required deposits to perpetual care or merchandise trust funds	\$500 per violation	\$10,000 per violation
Failure to timely deliver merchandise or services	\$500 per violation	\$10,000 per violation
Failure to maintain or provide proof of adequate insurance on stored merchandise	\$250 per violation (per day)	\$10,000 per violation
Failure to timely file annual perpetual care or merchandise trust fund reports	\$50 (per day, per report)	\$10,000 per violation
Failure to timely file application for predevelopment sales projects	\$50 (per day from the date of the first sale within the predevelopment project)	\$10,000 per violation
Failure to timely issue titles or certificates of interment rights	\$25 (per day, per title)	\$10,000 per violation
Failure to timely respond to consumer complaints	\$25 (per day, per complaint)	\$10,000 per violation
Failure to timely respond to violations noted in an examination by the board	\$25 (per day, per examination)	\$10,000 per violation
Any violations not specifically listed in this schedule	Not applicable	\$10,000 per violation

2. For each nonwillful violation:

Violation	Minimum fine	Maximum fine
Failure to maintain records pertaining to the operation and business of a cemetery	\$250 per violation	\$1,000 per violation
Operating without a valid, subsisting, and unsuspended certificate of authority	\$250 per violation (each interment is a violation)	\$1,000 per violation
Failure to timely make required deposits to perpetual care or merchandise trust funds	\$250 per violation	\$1,000 per violation
Failure to timely deliver merchandise or services	\$250 per violation	\$1,000 per violation
Failure to maintain or provide proof of adequate insurance on stored merchandise	\$125 per violation (per day)	\$1,000 per violation
Failure to timely file annual perpetual care or merchandise trust fund reports	\$25 (per day, per report)	\$1,000 per violation

Violation	Minimum fine	Maximum fine
Failure to timely file application for predevelopment sales projects	\$25 (per day from the date of the first sale within the predevelopment project)	\$1,000 per violation
Failure to timely issue titles or certificates of interment rights	\$15 (per day, per title)	\$1,000 per violation
Failure to timely respond to consumer complaints	\$15 (per day, per complaint)	\$1,000 per violation
Failure to timely respond to violations noted in an examination by the board	\$15 (per day, per examination)	\$1,000 per violation
Any violations not specifically listed in this schedule	Not applicable	\$1,000 per violation

E. Nothing in this section shall limit the authority of the board or the attorney general to bring any civil or administrative action for alleged violations not covered by any agreement entered into under this section or for breach of any agreement entered into under this section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:66 and R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:

Chapter 13. Declaratory Orders and Rulings

§1301. Right to Seek Order or Ruling; Procedure
[Formerly §1101]

A. A request for a declaratory order or ruling on the applicability of any statutory provision or of any rule or order of the board, shall be by petition filed with the board at its administrative office. Such petition shall set forth in clear and concise language all facts, circumstances and relevant information as to the necessity for such declaratory order or ruling, and shall make specific reference to the statutory provision, rule, or order of the board about which the declaratory order or ruling is requested. The petition shall be considered by the board at its next regularly-scheduled meeting, provided that the petition has been filed at least 30 days prior to that meeting.

B. Pending the issuance of the decision by the board, an order may be issued that other proceedings and actions connected with the matter submitted to the board shall be held in abeyance or stayed.

C. The costs incurred by the board in connection with any such request for a declaratory order or ruling are to be solely borne by the petitioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§1303. Declaratory Judgment for Determining Validity or Applicability of a Rule
[Formerly §1103]

A. The validity or applicability of a rule may be determined in an action for declaratory judgment in the Twenty-Fourth Judicial District Court for the Parish of Jefferson as provided for in the applicable provisions of the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

§1305. Informal Opinions
[Formerly §1105]

A. Nothing in these rules shall be construed as prohibiting the board from rendering an informal or advisory opinion to any person on any matter arising out of the administration or enforcement of the Louisiana Cemetery Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:

Chapter 15. Cemetery Care Fund

§1501. Payments to Perpetual Care Trust Fund
[Formerly §1301]

A. After establishment of the perpetual or endowed care trust fund when and as required by Title 8, the amount to be deposited in the trust fund shall be a minimum of 10 percent of the gross sales price received, less sales tax and interest or finance charges, if any, for the sale, transfer, or conveyance of any interment space or interment right.

B. In no event shall the deposit be less than 10 percent of the fair market value of each interment space or right conveyed. Such fair market value shall be the undiscounted price of a comparable right of interment or interment space in the same cemetery, unless otherwise provided in this Rule.

C. In addition to the minimum deposits required, a cemetery may require, within the cemetery's rules, additional deposits to the perpetual or endowed care trust fund. Such additional deposits shall not be withdrawn from the trust fund once deposited.

D. All perpetual or endowed care deposits shall be delivered to the trustee not later than the twentieth day after the close of the month of the sale or transfer of the interment space or interment right by the cemetery authority or cemetery sales/management organization. However, if the sale or transfer is financed by the seller and payments are pursuant to an installment contract, then the deposits to the trust fund must be made either:

1. not later than the twentieth day of the close of the month in which the contract is made; or
2. proportionally over the term of the contract, provided that the seller maintains adequate accounting records of the installment payments and the proportionate amounts due the trust fund.

E. If an installment contract is financed with or sold to a financial institution or entity other than the seller, the contract shall be considered paid in full, both as to time and amount, and the deposits shall be delivered to the trustee not later than the twentieth day after the end of the calendar month in which the cemetery authority receives the funds.

F. In the event that the purchase price of any such interment space is not fully paid and such space is thereafter resold, the cemetery authority shall be entitled to a credit for the amount that, in the interim, had been deposited in the trust fund attributable to such space, provided that the cemetery authority can provide sufficient documentation, acceptable to the board, of the credit due.

G. No deposit to the perpetual or endowed care trust fund shall be required in those instances in which a cemetery authority uses or conveys an interment space for an indigent interment, provided the space so used or conveyed is contained within a special area or section of the cemetery set aside and used solely for indigent interments.

H. No deposit to the perpetual or endowed care trust fund shall be required on the discounts given on predevelopment or preconstruction interment spaces or rights of interment in a mausoleum, if the cemetery has filed with the board the required application and supporting documentation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 8:467 (September 1982), amended by the Office of the Governor, Cemetery Board, LR 39:

§1503. Remittance by the Trustee to the Cemetery Authority

[Formerly §1303]

A. The principal of the trust fund shall remain permanently intact and only the income shall be expended.

B. The net income, after the deduction of costs associated with the operation of the trust, may be remitted to the cemetery for care and maintenance of the cemetery as provided for by Title 8. A cemetery authority may not charge the trust for administrative costs for the operation of the cemetery or trust funds.

C. All income received by the trustees of cemetery care funds, which is not remitted to the cemetery authority within 120 days after the end of the latest tax reporting year of the cemetery authority, owning or operating a cemetery for which the trust fund is maintained, shall become, for all purposes, part of and added to the corpus or principal of the trust, and may not be withdrawn or distributed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 8:467 (September 1982), amended by the Office of the Governor, Cemetery Board, LR 39:

§1505. Annual Reports Required

A. All perpetual or endowed care cemeteries shall submit a report to the board, on the forms prescribed by the board, within six months after the close of the cemetery authority's tax reporting year.

B. All trustees of perpetual or endowed care trust funds shall submit a report to the board, on the forms prescribed by the board, within 5 months after the close of the cemetery authority's tax reporting year, or within 60 days from resignation as trustee. The assets of the trust shall be reported on a cost basis.

C. If the trustee is unable to obtain the requisite signatures of the cemetery authority on the annual report as required by law, the trustee shall, nonetheless, submit the annual report to the board within the timeframe provided by law. Once the requisite signatures have been obtained, the trustee shall resubmit the completed report to the board and shall file the report with the clerk of court as required by the Louisiana Cemetery Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:

Chapter 17. Merchandise Trust Funds

§1701. Payments to the Merchandise Trust Fund

A. All contracts for the sale of cemetery related merchandise or personal property that are not delivered within 120 days after entering into such contract, shall, after establishment of the merchandise trust fund when and as required by Title 8, deposit into the trust fund a minimum of 70 percent of the price charged, less sales taxes, for each item of personal property contracted for, contracted for at a discount, or contracted for without charge or 125 percent of the wholesale cost, whichever is greater.

1. For deposits made at 125 percent of the wholesale cost, documentation to support wholesale cost must be maintained by the cemetery or other entity in the contract file of the customer and must be reviewable and verifiable by the board.

B. All contracts for the sale of cemetery related services that are not delivered within 120 days after entering into such contract, shall, after establishment of the merchandise trust fund when and as required by Title 8, deposit into the trust fund a minimum of 70 percent of the price charged for such service.

1. For each service contracted for at a discount or contracted for without charge, the deposit shall in no event be less than 70 percent of the highest price charged for such service during the preceding 12 months. Any and all documentation to support 70 percent of the highest price charged for such services during the preceding 12 months must be maintained by the cemetery or other entity in the contract file of the customer and must be reviewable and verifiable by the board.

C. All deposits due on merchandise and services shall be delivered to the trustee not later than the twentieth day after the close of the month in which the contract is made. However, if the contract is financed by the seller and payments are made pursuant to an installment contract and the delivery of the merchandise and services is not to be made until the contract is paid in full or more than 120 days after entering into such contract, then payments to the trust fund must be deposited either:

1. not later than the twentieth day of the close of the month in which the contract is made; or

2. proportionally over the term of the contract, provided that the seller maintains adequate accounting records of the installment payments and the proportionate amounts due the trust fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:

§1703. Delinquent Payments to Merchandise Trust Fund

A. If a deposit is not timely made, the board may require, in its sole discretion, that the deposit be 70 percent of the highest price charged in the 12 months preceding the deposit or 125 percent of the wholesale cost at the time the deposit is made, whichever is greater.

B. In the event that a cemetery or other entity converts previously stored merchandise to trusting, the board may require, in its sole discretion, that the deposit be 70 percent of the highest price charged in the 12 months preceding the

conversion or 125 percent of the wholesale cost at the time of conversion, whichever is greater.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:

§1705. Withdrawals from Merchandise Trust Fund

A. The merchandise trust funds shall be held in trust both as to principal and income earned thereon, and shall remain intact, except that the costs of operation of the trust may be deducted from the income earned thereon, until delivery of the personal property is made or the services are performed by the cemetery authority or other entity or until the death of the person for whose benefit said contract was made. A cemetery authority or other entity may not charge the income of the trust for administrative costs for the operation of the cemetery, other entity, or trust funds. Within a merchandise trust fund, realized capital gains and losses shall be allocated in the same manner as income.

B. At the time of withdrawal, if a cemetery or other entity has not allocated the income earned to each separate account, as required by the Louisiana Cemetery Act, only the funds on deposit for such account shall be withdrawn. Upon satisfactory proof to the board that such income has been allocated to a particular account, the board may, in its discretion, authorize the withdrawal of such funds.

C. Prior to a withdrawal, if the cemetery or other entity is delinquent in its deposits to the merchandise trust fund, the board may require verification that all deposits on the pending withdrawals are current before such withdrawals can be made.

D. Upon satisfactory proof to the board that there has been an error or overfunding of the trust the board may, in its sole discretion, authorize the withdrawal or credit of such funds from the trust.

E. In the event that a cemetery or other entity converts accounts previously trusted to storage and presents satisfactory proof to the board that the merchandise to be stored is the same product selected by the customer and satisfactory proof of compliance with all storage requirements, the board may, at its discretion, authorize the withdrawal consistent with the requirements contained in the Louisiana Cemetery Act and the rules of the board. If the cemetery or other entity intends to substitute the product previously selected by the customer, a certification of acceptance of the substituted product must be obtained from the customer and retained by the cemetery or other entity in the contract file of the customer prior to the approval of the withdrawal by the board.

F. For the purposes of withdrawal, certification of delivery shall include:

1. for services:
 - a. a copy of the death certificate; or
 - b. a copy of the burial transit permit; or
 - c. a copy of the published obituary;
2. for merchandise:
 - a. if the merchandise is delivered prior to the death of the contract beneficiary, such certification shall include:
 - i. a written statement certifying delivery of the merchandise or personal property and signed by an authorized representative of the cemetery or other entity; or
 - ii. a photograph of the merchandise or personal property as installed on the cemetery space; or

iii. a copy of the paid-in-full invoice;

b. if the merchandise is delivered after the death of the contract beneficiary, such certification shall include:

i. at least one of the items listed in Paragraph 1, above; and

ii. at least one of the items listed in Subparagraph 2.a, above;

3. all certification documents to support such withdrawals must be maintained by the cemetery or other entity in the contract file of the customer and must be reviewable and verifiable by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:

§1707. Annual Reports Required

A. All cemeteries and other entities shall submit a report and the report filing fee to the board, on the forms prescribed by the board, within six months after the close of the cemetery's or other entity's tax reporting year.

B. All trustees of merchandise trust funds shall submit a report to the board, on the forms prescribed by the board, within 90 days after the close of the cemetery's or other entity's tax reporting year, or within 60 days from resignation as trustee. The assets of the trust shall be reported on a cost basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:

§1709. Trust Reconciliation

A. In the event of a change of ownership or control of a cemetery, cemetery authority, or other entity, documentation that demonstrates that the existing merchandise trust fund complies with Title 8 and these rules shall be submitted to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:

§1711. General Storage Requirements

A. All storage of merchandise pursuant to Title 8 shall be stored in accordance with the following requirements:

1. merchandise shall be stored in an organized and accessible manner in order to allow for expedient verification of compliance with Title 8 and these rules; and

2. merchandise shall be stored in an environment so as to ensure the preservation of the merchandise.

B. If any merchandise is determined to be damaged and unusable, the cemetery or other entity shall replace the merchandise with an item of like kind and quality. Any cemetery or other entity with such damaged or unusable merchandise shall not be in compliance with Title 8 or these rules until such time as the damaged or unusable items are replaced.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:

Chapter 19. On-Site Inspections and Examinations

§1901. On-Site Inspections and Examinations Generally

A. The board shall have the right to make on-site inspections and examinations of cemetery authorities or other entities to verify compliance with the requirements of

Title 8 and these rules at any time during normal working hours and by any employee of the board or other person designated by the board to do so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:66 and R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:

§1903. On-Site Inspections and Examinations of Trust Funds
[Formerly §1305]

A. The board shall have the right to make on-site inspections and examinations of the perpetual or endowed care trust funds or the merchandise trust funds of a cemetery authority or other entity and its books and records pertaining thereto at any time during normal working hours and by any employee of the board or other person designated by the board to do so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 8:467 (September 1982), amended by the Office of the Governor, Cemetery Board, LR 39:

§1905. Records

A. At a minimum, the following records shall be made available to the board for the purposes of the on-site examinations or inspections:

1. financial, accounting, ledgers, and trust records.
 - a. for the sale, transfer, or conveyance of any interment space or interment right, and the sale of any cemetery related merchandise or services, the accounting records must delineate all payments made under a purchase agreement or contract, less sales tax and interest or finance charges, if any, and the portion of the payment upon which deposits are required to the perpetual or endowed care trust fund or the merchandise trust fund;
2. contracts, invoices, purchase agreements, interment rights, and deeds related to the sale, transfer, or conveyance of any interment space, interment right, or the sale of any cemetery related merchandise and services;
3. by-laws and rules of the cemetery;
4. ownership records of interment spaces and interment rights;
5. detailed maps and/or plats of the cemetery;
6. interment records; and
7. additional documentation and information the board or its representative may deem necessary to verify compliance with the provisions of Title 8 and the rules of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:

§1907. Verification of Compliance
[Formerly §1305]

A. During any such on-site examination the representative of the board shall, including, without limitation:

1. ascertain whether all deposits required to be made to the trust funds have been timely made by the cemetery or other entity;
2. ascertain whether trust funds are being administered pursuant to Title 8 and the rules of the board;

3. ascertain whether books and records of the cemetery or other entity are being maintained pursuant to Title 8 and the rules of the board;

4. inspect the grounds and other facilities of the cemetery to determine if perpetual care maintenance is, in fact, being reasonably performed; and

5. ascertain whether cemetery related merchandise and services have been delivered or stored in compliance with Title 8 and the rules of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 8:467 (September 1982), amended by the Office of the Governor, Cemetery Board, LR 39:

§1909. Examination Fees

A. The board shall assess the cemetery or other entity the costs associated with the expenses of the examination for each trust fund according to the following schedule:

1. if the examination takes one hour or less, there will be no fee charged;
2. if the examination takes more than one hour, but less than two hours, the fee will be \$25 per cemetery, per examiner;
3. if the examination takes two hours or more, the fee will be \$50 per cemetery, per examiner, per day, up to two days; and
4. if the examination takes more than two days, the cost shall be paid by the cemetery authority in an amount not to exceed a total of \$500, unless irregularities are found, in which case, the cemetery authority shall pay the full cost of the examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:

§1911. Report of Examination

A. The board shall furnish a copy of the on-site examination report to the cemetery, within a reasonable period of time, specifying any violations or exceptions noted during the examination. The cemetery shall have 30 days, after receipt of the report, in which to provide the board with a response to any violations or exceptions so noted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:

Chapter 21. Qualifications of Applicants for Certificates of Authority or a License

§2101. Qualifications
[Formerly §1501]

A. The Louisiana Cemetery Act requires the board to determine generally whether applicants and their officers, directors, owners, and managerial personnel have the ability, experience, financial stability and responsibility, integrity, trustworthiness, and have good personal and business reputations, in order to ensure that the applicant's operation of a cemetery, cemetery sales organization, or cemetery management organization will be of permanent benefit to the community in which it is located.

B. While no rigid specifications, particularly as to character, can be fashioned, some objective evidence of a lack of such qualifications should exist before an application

is denied. Unless the applicant produces evidence, acceptable to the board, indicating complete rehabilitation, the application should be denied if the applicant is an individual who has, or is a firm, association, corporation or limited liability company any of whose officers, owners, directors, limited liability company managers or managerial personnel has or have:

1. been convicted of a felony;
2. employed misrepresentation or deception in obtaining, renewing, or reinstating a license or privilege from a public entity, or in seeking a certificate of authority or license from this board; or
3. used false or misleading advertising or solicitation in any business venture.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 8:468 (September 1982), amended by the Office of the Governor, Cemetery Board, LR 39:

Chapter 23. Miscellaneous

§2301. Consumer Complaints

A. Upon receipt of a written consumer complaint on a form prescribed by the board, the board on its own or in conjunction with the attorney general may initiate any such investigation or inquiry to verify compliance with the Louisiana Cemetery Act and the rules of the board.

B. The board may require the cemetery that is the subject of the complaint to respond to any allegations contained in a properly submitted complaint, in writing, within 30 days of the cemetery's receipt of the complaint.

C. Nothing herein shall prohibit the cemetery authority, whether notified of a complaint by the board or not, from contacting the consumer and attempting to resolve the matter amicably without the assistance or intervention of the board.

D. Any inquiry or investigation undertaken pursuant to such consumer complaints are considered to be investigations by the board for the purposes of R.S. 8:66.1 and 44:4(44).

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:66 and R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:

§2303. Issuance of Documents Reflecting Title and Rights in Cemetery Spaces

A. The cemetery shall issue a title or certificate of interment right to the purchaser or transferee within 30 days of payment in full of the contract or transfer, if made without charge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:

§2305. Standards for Graves and Required Maps and Plats

A. A standard adult grave shall measure at least 42 inches in width and 96 inches in length, except for preinstalled vaults in designated areas and grave spaces for cremated remains.

B. Prior to the first sale of cemetery spaces or interment rights, the cemetery shall prepare a map documenting the establishment of recoverable internal survey reference markers installed no more than 50 feet apart.

- C. All maps or plats shall include, without limitation:
1. the number of cemetery spaces available for sale;
 2. the location of each cemetery space;
 3. the number designation assigned to each cemetery space;
 4. the dimensions of a standard adult grave space;
 5. information sufficient to locate the map within the land survey submitted to the board.

D. In the event that the board finds, after a hearing, that a cemetery cannot specifically identify the location of interments, the board may, at its discretion, and for the protection of the health, safety, and welfare of the public, prohibit further sales or burials in the cemetery or particular sections of the cemetery until the cemetery is in compliance with Title 8 and these rules.

E. The location of monuments and other memorials that contain cremated remains must be shown on the cemetery's maps or plats.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:

§2307. Preconstruction Projects

A. Prior to the first sale of a cemetery space or the right of use or interment in any cemetery space in a structure that has not yet been constructed or developed, the cemetery authority shall submit to the board, on a form prescribed by the board, the following:

1. a copy of the preliminary plans;
2. a map or plat delineating the sections, blocks, plots, avenues, walks, halls, rooms, corridors, elevations, or other subdivisions, with descriptive names or numbers;
3. a copy of all sales and promotional material;
4. a copy of the preconstruction/development sales contract; and
5. any such additional information and documentation that the board may deem necessary.

B. Prior to the commencement of construction, the cemetery shall notify the board, in writing, and request approval of any significant modifications to the preliminary plans previously submitted to the board. Significant modifications include, but are not limited to, cancellation of a project, downsizing of a project, substitution of construction materials, and changes in or elimination of a feature of the project.

C. If the cemetery anticipates that it will not meet the commencement and/or completion deadlines set forth in Title 8, the cemetery shall request an extension from the board, in writing, setting forth the reasons for the delays. The board shall consider the extension request at its next regularly scheduled meeting following receipt of the request.

D. Within 30 days of completion of a preconstruction or predevelopment project, the cemetery shall provide the board with a completion notification on a form prescribed by the board, along with any additional information and documentation that the board may deem necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:66 and R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:

Chapter 25. Construction; Divisibility

§2501. Construction; Divisibility

[Formerly §1701]

A. If any provision of these rules or the application thereof is held invalid, the remainder of these rules or other applications of such provisions shall not be affected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), amended LR 8:467 (September 1982), amended by the Office of the Governor, Cemetery Board, LR 39:

Family Impact Statement

In compliance with Acts 1999, No. 1183, the impact of these proposed rules on the family has been considered. The proposed rules have no known impact on family functioning, formation, stability, or autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Acts 2012, No. 854, the impact of this proposed Rule on the poverty has been considered. The proposed Rule has no known impact on poverty as described in R.S. 49:973.

Small Business Statement

In compliance with Acts 2008, No. 820, the Regulatory Flexibility Act, the impact of these proposed rules on small businesses has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses.

Public Comments

Interested persons may submit written comments to Lucy L. McCann, Louisiana Cemetery Board, 3445 North Causeway Boulevard, Suite 700, Metairie, LA 70002. She is responsible for responding to inquiries regarding the proposed Rule. The deadline for submitting written comments is 4:30 p.m., May 24, 2013.

Public Hearing

A public hearing on the proposed Rule is scheduled for Thursday, May 30, 2013, at 9:30 a.m., Livingston Building, 1885 North Third Street, First Floor Main Conference Room, Baton Rouge, LA 70802. At that time all interested persons will be afforded an opportunity to submit data, views, or arguments either orally or in writing.

Lucy L. McCann
Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Cemetery Industry**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will have no anticipated implementation costs or savings to state or local governmental units. The Louisiana Cemetery Board regulates the cemetery industry pursuant to the Louisiana Cemetery Act (R.S. 8:1, et seq). The purpose of the proposed rule change is to incorporate into the existing rules all legislative amendments to the Act since the promulgation of the rules in 1975 and 1982. The proposed rule change incorporates existing policies into the rules of the Louisiana Cemetery Board and corrects technical and grammatical errors in the original rules.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will have no impact on state or local governmental revenues.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Because the proposed rule change provides for the codification of existing laws, rules, and practices, there are no anticipated costs and/or economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment as a result of the proposed rule change.

Lucy L. McCann
Director
1304#018

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Examiners for Licensed
Professional Counselors**

LPC Practice and Code of Conduct
(LAC 46:LX.Chapters 1-37)

In accordance with R.S. 49:950 et seq., of the Louisiana Administrative Procedures Act, as well as R.S. 37:1103, 1104, 1106, 1107, 1109, 1110, 1117, and R.S. 37:1118, the Louisiana Professional Counselors Board of Examiners has adopted rules and amended its existing rules and regulations, by revising LAC 46:LX.Chapter 1, 3, 5, 7, 8, 9, 11, 13, 15, 17, 21, 33, 35, and 37. These revisions and additions are, in part, necessary to implement Act 276 and Act 636 of the 2012 Regular Session of the Louisiana Legislature. Additionally, new rules are needed for the board to update the LPC Code of Conduct based on the latest edition of the American Counseling Association Code of Ethics. Specifically, the Licensed Professional Counselors Board of Examiners has amended Sections 103, 301, 307, 501, 503, 701, 703, 705, 801, 803, 901, 903, 1101, 1303, 1305, 1309, 1311, 1321, 1323, 1703, 2101, 2103, 2105, 2107, 2109, 2113, 2115, 2117, 2118, 3313, 3315, 3701, and added Sections 505, 1103, 1505, and 3703.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

**Part LX. Licensed Professional Counselors
Board of Examiners**

Subpart 1. Licensed Professional Counselors

Chapter 1. General Provisions

§103. Description of Organization

A. The Louisiana Licensed Professional Counselors Board of Examiners, hereafter referred to as the board, resides in the Department of Health and Hospitals, and consists of 11 members, who shall be residents of the state of Louisiana. Each term shall be for four years. The governor shall make seven appointments to the board from a list of qualified candidates submitted by the executive board of the Louisiana Counseling Association. The governor shall make

four appointments to the board from a list of candidates submitted by the executive board of the Louisiana Association for Marriage and Family Therapy. Each appointment by the governor shall be submitted to the senate for confirmation. board membership shall consist of three licensed professional counselors, three educators who are licensed professional counselors and whose function is the training of mental health counselors in accredited programs, four licensed marriage and family therapists, and one individual from the public at large. No board member shall serve more than two full consecutive terms. The professional membership of the board shall be licensed under this Chapter. No board member shall be liable in any civil action for any act performed in good faith in the execution of his duties under Chapter 13 of Title 37.

1. - 3.d....

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:128 (February 2003), amended LR 29:2782 (December 2003), LR 39:

Chapter 3. Board Meetings, Procedures, Records, Powers and Duties

§301. Officers

A. The board shall elect from its membership a chair, vice chair, and secretary. The chair shall preside at all meetings at which he or she is in attendance and perform all duties prescribed by Chapter 13 of Title 37 and the board. The chair is authorized by the board to make day-to-day decisions regarding board activities to facilitate the responsiveness and effectiveness of the board. The vice chair shall perform the duties of the chair in case of absence or disability of the chair. In the event the office of chair becomes vacant, the vice chair shall serve as chair until a successor is named. In the absence of the chair and vice chair, the secretary will preside until the chair or vice chair is present. The secretary shall keep the minutes of board meetings and send said minutes to board members and the clerical secretary of the board before each regular meeting of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:82 (February 1988), amended by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:129 (February 2003), LR 39:

§307. Meetings

A. The board shall be domiciled in Baton Rouge and shall hold its meetings in places to be designated by the board. The chair will call meetings after consultation with board members or by a majority of members voting at a regular meeting. Reasonable notice of all board meetings will be given by posting the meeting place and time, seven days before the meeting, on the door of the office of the board and in two places in the building housing the office of the board. The board may examine, approve, revoke, suspend, and renew the license of applicants and shall review applications at least once a year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:82 (February 1988), amended by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:129 (February 2003), LR 39:

Chapter 5. License and Practice of Counseling

§501. License of Title and Practice

A. As stated in R.S. 37:1111(A), no person shall assume or use the title or designation "Licensed Professional Counselor" or engage in the practice of mental health counseling unless the person possesses a valid license issued by the board under the authority of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:83 (February 1988), amended by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:130 (February 2003), LR 39:

§503. Definitions for Licensed Professional Counselors

A. For purposes of this rule, the following definitions will apply.

* * *

Licensed Professional Counselor—any person who holds oneself out to the public for a fee or other personal gain, by any title or description of services incorporating the words "licensed professional counselor" or any similar term, and who offers to render professional mental health counseling/psychotherapy services denoting a client-counselor relationship in which the counselor assumes the responsibility for knowledge, skill, and ethical consideration needed to assist individuals, groups, organizations, or the general public, and who implies that he/she is licensed to practice mental health counseling.

Mental Health Counseling/Psychotherapy Services—rendering or offering prevention, assessment, diagnosis, and treatment, which includes psychotherapy of mental, emotional, behavioral, and addiction disorders to individuals, groups, organizations, or the general public by a licensed professional counselor which is consistent with his professional training as prescribed by R.S. 37:1107(A)(8), and code of ethics/behavior involving the application of principles, methods, or procedures of the mental health counseling profession. However, nothing in this Chapter shall be construed to authorize any person licensed hereunder to administer or interpret test in accordance with the provision of R.S.37:2352(5), except as provided by LAC 46:LXIII.1702.E of the Louisiana Administrative Code, or engage in the practice of psychology or to prescribe, either orally or in writing, distribute, dispense, or administer any medications.

Practice of Mental Health Counseling/Psychotherapy—rendering or offering prevention, assessment, diagnosis, and treatment, which includes psychotherapy of mental, emotional, behavioral, and addiction disorders to individuals, groups, organizations, or the general public by a licensed professional counselor, which is consistent with his professional training as prescribed by R.S. 37:1107(A)(8), and code of ethics/behavior involving the application of principles, methods, or procedures of the mental health

counseling profession which includes but is not limited to:

a. *Mental Health Counseling/Psychotherapy*—assisting an individual or group through psychotherapy by rendering or offering prevention, assessment, diagnosis, and treatment, which includes psychotherapy of mental, emotional, behavioral, and addiction disorders. This professional relationship empowers diverse individuals, families, and groups to accomplish mental health, wellness, education, and career goals.

i. - ii.(b). ...

(c). a minimum of one and one-half hours per week of group supervision with other students in similar practica or internships by a program faculty member supervisor or a student supervisor working under the supervision of a program faculty member or an approved on-site supervisor that meets the on-site supervisor requirements established by the university.

b. *Consulting*—interpreting or reporting scientific fact or theory to provide assistance in solving current or potential problems of individuals, groups, or organizations. §505 defines ongoing consultation and collaboration for assessment, diagnosis, and treatment of “serious mental illnesses”.

c. - e.ii. ...

iii. Appraisals done within the practice of mental health counseling must be performed in accordance with the requirements of the *Louisiana Administrative Code*, Title 46, Part LX, Chapter 21. Code of Conduct for Licensed Professional Counselors. A licensed professional counselor must be privileged by this board to utilize formal appraisal instruments and shall limit such use to those areas heretofore mentioned in this Chapter. A licensed professional counselor who wishes to be board privileged to utilize formal appraisal instruments in the appraisal of individuals shall additionally furnish this board satisfactory evidence of formal graduate training in statistics, sampling theory, test construction, test and measurements and individual differences and must renew this privileging designation every two years (as defined in Chapter 8). Formal training shall include a practicum and supervised practice with appraisal instruments.

f. *Graduate Degree*—the substance of which is professional mental health counseling from a regionally accredited university (as defined in Chapter 7) and must conform to one of the criteria below:

i. ...

ii. a counseling program incorporating the word “counseling” or “counselor” in its title;

iii. a program incorporating a counseling-related term in its title (e.g., “marriage and family therapy”) or

iv. a program incorporating the eight content areas, a counseling practicum, and a counseling internship.

g. The requisite graduate degree may not consist of a degree in any disciplines otherwise licensed by the state of Louisiana including, but not limited to, psychology, clinical psychology, or social work, with the exception of counseling psychology and vocational rehabilitation counseling programs.

h. ...

i. *Approved Supervisor*—an individual who has received a letter from the board certifying that all the

requirements for approved supervisor as defined in Chapter 7, §705 were met.

j. *Counselor Intern*—an individual who has received a letter from the board certifying that all the requirements for counselor intern as defined in Chapter 7, §705 were met.

k. *Internet Counseling*—mental health services delivered over the internet are rendered where the patient/client is situated. All counselors/therapists serving Louisiana residents must be licensed in Louisiana and must adhere to all applicable state laws relative to the practice of mental health counseling. RS 37:1111 prohibits any person from engaging in the practice of mental health counseling in Louisiana unless he/she possesses a valid license issued by the Louisiana LPC Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 371101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:83 (February 1988), amended by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 16:302 (April 1990), LR 18:51 (January, 1992), LR 22:101 (February 1996), LR 24:437 (March 1998), LR 24:2124 (November 1998), LR 26:493 (March 2000), LR 29:130 (February 2003), LR 33:2654 (December 2007), LR 39:

§505. Serious Mental Illnesses

A. Introduction. Act 636 of the 2012 Regular Session of the Louisiana Legislative amended the Louisiana Professional Counselors Practice Act as follows.

1. *Mental Health Counseling/Psychotherapy Services*—rendering or offering prevention, assessment, diagnosis, and treatment, which include psychotherapy, of mental, emotional, behavioral, and addiction disorders to individuals, groups, organizations, or the general public by a licensed professional counselor, which is consistent with his professional training as prescribed by R.S. 37:1107(A)(8), and code of ethics/behavior involving the application of principles, methods, or procedures of the mental health counseling profession.

2. However, a counselor may not assess, diagnose, or provide treatment to any individual suffering from a serious mental illness when medication may be indicated, unless the counselor consults and collaborates with a practitioner who is licensed or holds a permit with the Louisiana State Board of Medical Examiners or an advanced practice registered nurse licensed by the Louisiana State Board of Nursing who is certified as a psychiatric nurse practitioner.

B. Applicability. The requirement for collaboration and consultation set forth above shall apply only if any of the following conditions are assessed, diagnosed, or treated by the counselor:

1. schizophrenia or schizoaffective disorder;
2. bipolar disorder;
3. panic disorder;
4. obsessive-compulsive disorder;
5. major depressive disorder- moderate to severe;
6. anorexia/bulimia;
7. intermittent explosive disorder;
8. autism;
9. psychosis NOS (not otherwise specified) when diagnosed in a child under seventeen years of age;
10. Rett’s disorder;

11. Tourette's disorder;
12. dementia.

C. Definitions

1. As used herein *practitioner*—an individual who is licensed or holds a permit with the State Board of Medical Examiners or an advanced practice registered nurse licensed by the Louisiana State Board of Nursing who is certified as a psychiatric nurse practitioner.

2. As used herein *medication is indicated*—when the client has been diagnosed with a serious mental illness and:

a. when the client or legal guardian discloses the prescribed use of psychiatric medication;

b. when the counselor, client, or legal guardian believes that the use of prescribed psychiatric medication may facilitate treatment goals and improve client functioning.

3. As used herein: *Consultation and Collaboration*—may be specific or general in nature.

a. specific consultation and collaboration—when medication is indicated for clients who have been diagnosed with a serious mental illness and if the client assents to consultation, the counselor must attempt to consult with the client's practitioner within a reasonable time after receiving the consent for the purpose of communicating the diagnosis and plan of care.

i. If the counselor's attempts to consult directly with the practitioner are not successful, the counselor must notify the practitioner within a reasonable time that he or she is providing services to the client. Also, the counselor must document in the client's file the date of client consent, the date of consultation, or, if attempts to consult did not succeed, the date and manner of notification to the practitioner. The counselor will inform the client of the inability to consult directly with the practitioner and will discuss and document additional options with the client, including that of general consultation and collaboration. The counselor will provide information to the practitioner regarding client progress as conditions warrant. Consultation and collaboration, for purposes of these rules and otherwise, shall not be construed as supervision. Further, consultation and collaboration does not include the transfer between the consulting professionals of responsibility for the client's care or the ongoing management of the client's presenting problem(s).

ii. If attempts to consult directly with a practitioner for a specific consultation are successful, the counselor must document in the client's file the information obtained in the specific consultation. The counselor will provide information to the practitioner regarding client progress as conditions warrant.

b. general consultation and collaboration—when medication is indicated for clients who have been diagnosed with a serious mental illness and when the client does not assent to a specific consultation, the counselor must attempt to consult with a practitioner within a reasonable time for a general consultation without releasing any identifying information about the client.

i. If the counselor's attempts to consult directly with a practitioner are not successful, the counselor must document in the client's file the date of client refusal for consent to consult, the date of general consultation, or, if

attempts to consult did not succeed, the date and manner of notification to a practitioner.

ii. If attempts to consult directly with a practitioner for a general consultation are successful, the counselor must document in the client's file the information obtained in the general consultation. The counselor will provide general information to the practitioner regarding client progress as conditions warrant.

c. Consultation and collaboration, for purposes of these rules and otherwise, shall not be construed as supervision. Further, consultation and collaboration does not include the transfer between the consulting professionals of responsibility for the client's care or the ongoing management of the client's presenting problem(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1105(D).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 39:

Chapter 7. Requirements for Licensure of Licensed Professional Counselors

§701. General Provisions

A. The board shall license to practice all persons who present satisfactory evidence of qualifications as specified in these rules and regulations of the board. Such licensure shall be signed by the chair and vice chair of the board under the seal of the board. No license shall be denied any applicant based upon the applicant's age, culture, disability, ethnicity, race, religion/spirituality, gender, gender identity, sexual orientation, marital status/partnership, language preference, socioeconomic status, or any basis proscribed by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:83 (February 1988), amended by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:131 (February 2003), LR 39:

§703. Licensed Professional Counselors Licensing Requirements

A. The board shall issue a license to each licensed professional counselor applicant who files an application upon a form designated by the board and in such a manner as the board prescribes, accompanied by such fee required by R.S. 37:1106 and who furnishes satisfactory evidence to the board that he/she:

1. - 2. ...

3. is not in violation of any of the provisions of R.S. 37:1101-1122 and the rules and regulations adopted herein;

4. can document a minimum of 3,000 hours of post-master's experience in professional mental health counseling under the clinical supervision of a board-approved supervisor, with said supervision occurring over a period of no less than two years and not more than seven years from the original date such supervision was approved. Five hundred indirect hours of supervised experience may be gained for each 30 graduate semester hours earned beyond the required master's degree, provided that such hours are clearly related to the field of mental health counseling, are earned from a regionally accredited institution, and are acceptable to the board provided that in no case the applicant

has less than 2,000 hours of board-approved supervised experience within the aforementioned time limits. All documents for licensure must be submitted before the end of the seven year period. Failure to submit all documents for licensure by the end of the seven year period will result in forfeiture of all previously accrued direct, indirect, and face to face supervision hours, and the applicant must reapply under the current rules. A request for extension may be made to the board in writing no later than 60 days prior to the end of the seven year period. The board will review such requests to determine if an exception is warranted;

5. has declared special competencies and demonstrated professional competence therein by passing a written and, at the discretion of the board, an oral examination as shall be prescribed by the board;

6. has received a graduate degree, as defined in Chapter 5, the substance of which is professional mental health counseling in content from a regionally accredited institution of higher education offering a master's and/or doctoral program in counseling that is approved by the board and has accumulated at least 48 graduate semester hours as part of the graduate degree plan containing the eight required areas, the supervised mental health practicum and supervised internship in mental health counseling (as defined in Chapter 5). Applicants may apply post-masters counseling courses towards licensure if their degree program consisted of less than 48 hours. Beginning September 1, 2015, all applicants whose academic background has not been previously approved by the board, must have accumulated at least 60 graduate semester hours as part of the graduate degree plan containing the eight required areas, the supervised mental health practicum and supervised internship in mental health counseling (as defined in Chapter 5). Applicants may apply post-masters counseling courses towards licensure if their degree program consisted of less than 60 hours.

a. the following eight areas are required to have at least one semester course:

- i. counseling/theories of personality;
- ii. human growth and development;
- iii. abnormal behavior;
- iv. techniques of counseling;
- v. group dynamics, processes, and counseling;
- vi. lifestyle and career development;
- vii. appraisal of individuals;
- viii. ethics;

7. has provided to the board a declaration of practices and procedures, with the content being subject to board review and approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:83 (February 1988), amended by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 18:269 (March 1992), LR 22:102 (February 1996), LR 24:1294 (July 1998), LR 24:2124 (November 1998), LR 29:131 (February 2003), LR 39:

§705. Supervised Experience of Counselor Interns

A. - A.1. ...

2. Pursuant to R.S. 37:1107(A), an applicant for license must document a minimum of 3,000 hours of post-master's experience in professional mental health counseling under the clinical supervision of a board-approved

supervisor, with said supervision occurring over a period of no less than two years and not more than seven years from the original date such supervision was approved. A supervisee must remain under supervision of a board-approved supervisor until receiving written notification of approval for licensure. An out of state applicant may transfer up to 2500 hours of supervised experience towards licensure (a maximum of 1600 direct client contact hours, a maximum of 815 indirect hours, and a maximum of 85 hours of face to face supervision). The aforementioned hours must have been accrued under the clinical supervision of an approved supervisor within their state who meets the qualifications of a supervisor of counselor interns set forth by the Licensed Professional Counselor Board of Examiners. The decision to approve transfer of hours and supervisors from out of state shall be made at the discretion of the board.

3. Five hundred indirect hours of supervised experience may be gained for each 30 graduate semester hours earned beyond the required master's degree provided that such hours are clearly related to the field of mental health counseling, are earned from a regionally accredited institution, and are acceptable to the board, provided that in no case the applicant has less than the 2,000 hours of board-approved supervised experience within the aforementioned time limits. All documents for licensure must be submitted before the end of the seven year period. Failure to submit all documents for licensure by the end of the seven year period will result in forfeiture of all previously accrued direct, indirect, and supervision hours, and the applicant must reapply under the current rules. A request for extension may be made to the board in writing no later than 60 days prior to the end of the seven year period. The board will review such requests to determine if an exception is warranted;

a.i. Based on the above, the required 3,000 hours of counseling/psychotherapeutic experience shall be accrued in the following manner.

(a.) a minimum of 1,900 hours (up to 2,900) in direct counseling/psychotherapeutic services involving individuals, couples, families, or groups.

(b.) a maximum of 1,000 hours in additional client contact, counseling related activities (i.e., case notes, staffing, case consultation, or testing/assessment of clients) or education at the graduate level in the field of mental health as defined above;

(c.) a minimum of 100 hours of face to face supervision by a board-approved supervisor. Up to 25 of the 100 face to face hours may be conducted by synchronous videoconferencing.

ii. An applicant may utilize supervised hours earned in post-master's degree courses in counseling or in a doctoral degree program in counseling toward the required hours of supervised experience in addition to exercising the option of substituting 30 graduate semester hours earned beyond the master's degree for 500 hours of supervised experience, as long as supervised experience, practicum, or internship courses are not included in the 30 graduate semester hours that are used to substitute for 500 hours of supervised experience. In no case, may the applicant have less than 2,000 hours of supervised experience.

b. The board recommends one hour of supervision for every 20 hours of direct client contact as outlined in Subclause A.2.a.i.(a). Supervision may not take place via

mail, email, or telephone. Telephone, mail, or email contacts with supervisor may be counted under Subclause A.2.a.i.(b) (i.e., consultation), however, it cannot be counted as face to face supervision as defined in Subclause A.2.a.i.(c).

c. To be eligible for supervision as a counselor intern, the applicant must provide proof of completion of a supervised practicum and internship as listed in §503, Definitions and each of the following eight content area. In order for a course to fulfill a content area requirement, it must include in a substantial manner, the area in the description for the content areas.

i. Counseling/Psychotherapy Theories of Personality. Description: counseling/psychotherapy theories including both individual and systems perspectives; research and factors considered in applications of counseling/psychotherapy theories; or theories of personality including major theories of personality.

ii. Human Growth and Development. Description: the nature and needs of individuals at developmental levels; theories of individual and family development and transitions across the life-span; theories of learning and personality development; human behavior including an understanding of developmental crises, disability, addictive behavior, psychopathology, and environmental factors as they affect both normal and abnormal behavior; strategies for facilitating development over the lifespan.

iii. Abnormal Behavior. Description: emotional and mental disorders experienced by persons of all ages; characteristics of disorders; common nosologies of emotional and mental disorders utilized within the U.S. health care system; the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, as published by the American Psychiatric Association; preferred treatment approaches for disorders based on research; common medications used by psychiatrists to treat disorders; working with other health care and mental health care professionals in treating individuals with emotional and mental disorders.

iv. Techniques of Counseling/Psychotherapy. Description: basic interviewing, assessment, and counseling/psychotherapeutic skills; counselor characteristics and behaviors that influence helping processes including age, gender and ethnic differences, verbal and non verbal behaviors and personal characteristics, orientations, and skills; client characteristics and behaviors that influence helping processes including age, gender and ethnic differences, verbal and non verbal behaviors and personal characteristics, traits, capabilities, and life circumstances.

v. Group Dynamics, Processes, and Counseling/Psychotherapy. Description: principles of group dynamics including group process components, developmental stage theories, and group members' roles and behaviors; group leadership styles and approaches including characteristics of various types of group leaders and leadership styles; theories of group counseling/psychotherapy including commonalities, distinguishing characteristics, and pertinent research and literature; group counseling/psychotherapeutic methods including group counselor orientations and behaviors, ethical standards, appropriate selection criteria and methods, and methods of evaluation of effectiveness; approaches used for

other types of group work, including task groups, prevention groups, support group, and therapy groups.

vi. Lifestyle and Career Development. Description: career development theories and decision-making models; career, a vocational, educational, and labor market information resources, visual and print media, and computer-based career information systems; career development program planning, organization, implementation, administration, and evaluation; interrelationships among work, family, and other life roles and factors including multicultural and gender issues as related to career development; career and educational placement, follow-up and evaluation; assessment instruments and techniques relevant to career planning and decision-making; computer based career development applications and strategies, including computer-assisted guidance systems; career counseling processes, techniques and resources including those applicable to specific populations.

vii. Appraisal of Individuals. Description: theoretical and historical bases for assessment techniques; validity including evidence for establishing content, construct, and empirical validity; reliability including methods of establishing stability, internal and equivalence reliability; appraisal methods including environmental assessment, performance assessment, individual and group test and inventory methods, behavioral observations, and computer-managed and computer-assisted methods; psychometric statistics including types of assessment scores, measures of central tendency, indices of variability, standard errors, and correlations; age, gender, ethnicity, language, disability, and culture factors related to the assessment and evaluation of individuals and groups; strategies for selecting, administering, interpreting, and using assessment and evaluation instruments and techniques in counseling.

viii. Ethics. Description: ethical standards of the American Counseling Association, state counselor licensure boards, and national counselor certifying agencies; ethical and legal issues and their applications to various professional activities; history of the helping professions including significant factors and events; professional roles and functions of counselors including similarities and differences with other mental health professionals; professional organizations, primarily the American Counseling Association, its divisions, branches, and affiliates, including membership benefits, activities, services to members, and current emphases, professional preparation standards, their evolution, and current applications; professional credentialing including certification, licensure, and accreditation practices and standards, and the effects of public policy on these issues; public policy processes including the role of the professional counselor in advocating on behalf of the profession and its clientele.

3. Acceptable modes for supervision of direct clinical contact are the following.

a. Individual Supervision. The supervisory session is conducted by an approved supervisor with one counselor intern present.

b. Group Supervision. The supervisory session is conducted by an approved supervisor with no more than 10 counselor interns present.

4. At least 100 hours of the counselor intern's direct clinical contact with clients must be supervised by an approved supervisor or supervisors, as defined below.

a. At least 50 of these 100 hours must be individual supervision as defined above. The remaining 50 hours of these 100 hours may be either individual supervision or group supervision as defined above.

b. A supervisor may not supervise more than 10 counselor interns at any given time.

5. Supervisors of, counselor interns, as defined in these rules, have the responsibility of assisting counselor interns in increasing their skills as a mental health professional. Supervisors, as defined in these rules, have no control, oversight, or professional responsibility for the services of counselor interns whom they are supervising, unless a supervisor also serves as the administrative supervisor of a counselor interns in the setting in which the counselor intern is employed or contracted or is rendering counseling services on a volunteer basis. The control, oversight, and professional responsibility for counselor interns rests with the counselor intern's administrative supervisor in the setting in which they are employed or contracted or are rendering counseling services on a volunteer basis. A licensed mental health professional (e.g. LPC, LMFT, LCSW), not necessarily the board approved supervisor, must be employed in the professional setting in which the counselor intern is rendering counseling services and be available for case consultation and processing. In obtaining permission for outside supervision, counselor interns must notify their administrative supervisor of the identity of their supervisor for the purpose of gaining the supervised experience for licensure and the nature of the supervisory activities, including any observations or taping that occurs with clients, after obtaining the client's permission, in the setting.

6. - 11. ...

12. The counselor intern must have received a letter from the board certifying that all the requirements for *Counselor Intern* as defined in this Chapter were met.

13. The professional setting cannot include private practice in which the counselor intern operates, manages or has an ownership interest in the private practice.

A.14. - B. ...

1. Supervision of counselor interns is a specialty area and requires privileging review. Those individuals who may provide supervision to counselor interns must meet the following requirements.

B.1.a. - D. ...

1. All proposed supervision arrangements must be approved by the board prior to the starting date of the supervised experience.

a. - a.i. ...

ii. submit this written proposal on forms provided by the board prior to the proposed starting date of the supervision;

1.a.iii. - 2. ...

3. Following the board's review, the counselor intern will be informed by letter either that the proposed supervision arrangement has been approved or that it has been rejected. Any rejection letter will outline, with as much specificity as practical, the reasons for rejection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 18:269 (March 1992), amended LR 21:465 (May 1995), LR 22:102 (February 1996), LR 24:1294 (July 1998), LR 24:2124 (November 1998), LR 26:493 (March 2000), LR 29:132 (February 2003), LR 33:2655 (December 2007), LR 39:

Chapter 8. Renewal of Licensed Professional Counselor Licenses and Privileging Designations

§801. Renewal

A. A licensed professional counselor shall renew his/her license and privileging designation(s) every two years in the month of June by meeting the requirement that 40 clock hours of continuing education be obtained prior to each renewal date every two years in an area of professional mental health counseling as approved by the board and by paying a renewal fee. The licensee should submit a declaration statement only if there has been a change in area of expertise, with the content being subject to board review and approval. The board, at its discretion, may require the licensee to present satisfactory evidence supporting any changes in areas of expertise noted in the declaration statement. The chair shall issue a document renewing the license for a term of two years. The license or privileging designation of any mental health counselor who fails to have this license or privileging designation renewed every two years during the month of June shall lapse; however, the failure to renew said license or privileging designation shall not deprive said counselor the right of renewal thereafter. A lapsed license or privileging designation may be renewed within a period of two years after the expired renewal date upon payment of all fees in arrears and presentation of evidence of completion of the continuing education requirement. Application for renewal after two years from the date of expiration will not be considered for renewal; the individual must apply under the current licensure and/or privileging guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 18:271 (March 1992), amended LR 22:102 (February 1996), LR 24:1294 (July 1998), LR 26:494 (March 2000), LR 29:134 (February 2003), LR 39:

§803. Continuing Education Requirements for Licensed Professional Counselors and Board Approved Supervisors

A. General Guidelines

1. A licensee must accrue 40 clock hours of continuing education by every renewal period every two years. Of the 40 clock hours of continuing education, 3 clock hours must be accrued in ethics and 6 clock hours must be accrued in diagnosis (assessment, diagnosis, and treatment under the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, as published by the American Psychiatric Association). A board Approved Supervisor must accrue 3 clock hours (of the required 40 clock hours of continuing education) in supervision.

2. - 5. ...

6. At the time of renewal 10 percent of the licensees will be audited to ensure that the continuing education

requirement is being met. If you are one of the 10 percent chosen, you will be notified to submit documentation of your CEHs.

B. Approved Continuing Education for Licensed Professional Counselors and Board Approved Supervisors

1. Continuing education requirements are meant to encourage personal and professional development throughout the counselor's career. For this reason a wide range of options are offered to accommodate the diversity of counselors' training, experience and geographic locations.

2. A counselor may obtain the 40 CEHs through one or more of the options listed below. Effective July 1, 2014 a maximum of 20 CEHs may be obtained through an online format, with the exception of coursework obtained through a regionally accredited institution of higher education.

a. ...

b. Continuing Education Not Preapproved. For those organizations, groups or individuals that do not carry provider status by one of the associations listed in Subparagraph a of this Paragraph, the continuing education hours will be subject to approval by the Licensed Professional Counselors Board of Examiners at the time of renewal. The board will not pre-approve any type of continuing education. The continuing education must be in one of the 14 approved content areas listed in §803.C, and be given by a qualified presenter. A qualified presenter is considered to be someone at the master's level or above and trained in the mental health field or related services. One may receive one clock hour of continuing education for each hour of direct participation in a structured educational format as a learner. Credit cannot be granted for: business/governance meetings; breaks; social activities including meal functions, except for actual time of a content speaker. Credit cannot be given for an approved session to persons who leave early from that session. Verification for workshops, seminars, or conventions can consist of copies of certificates of attendance. Typically one continuing education unit (CEU) is equivalent to 10 clock hours (CEH).

c. ...

d. Home Study. (10 hours maximum per renewal period, effective July 1, 2014). The LCA journal, video presentations and approved teleconferences are all approved home study options. Each option must carry a provider number from either NBCC, LCA or other board-approved mental health organizations. Each activity will specify the number of CEHs that will be granted upon completion. Verification consists of a certificate issued by NBCC, LCA or certificates from other professional mental health organizations that will be reviewed by the board.

e. Presentations. (10 hours maximum per renewal period, effective July 1, 2014). Presenters may get credit for original presentations at a rate of five clock hours per one hour presentation. Presenters must meet the qualifications stated in Subparagraph B.2.b above. The presentation must be to the professional community; not to the lay public or a classroom presentation. The presentation must also be in one of the 12 approved content areas listed in §803.C. Verification of your presentation consists of obtaining a letter from the workshop/convention coordinator stating the topic, date, and number of hours of presentation.

f. Publishing. (10 hours maximum per renewal period, effective July 1, 2014). Authors may receive five clock hours per article or chapter in a book. The article must be published in a professional refereed journal. Both articles and chapters must be in one of the 12 approved content areas listed in §803.C. Verification will consist of either a reprint of the article/chapter, or a copy of the article/chapter, cover of the book/journal and page listing the editor or publisher.

g. Counseling. (10 hours maximum per renewal period). One may receive one clock hour of continuing education per counseling hour as a client. To qualify, one must be a client receiving services from a licensed mental health professional having qualifications equal to or exceeding those currently required of counselors. Consultation and supervision hours do not qualify. Verification will consist of a letter from the counseling mental health professional verifying client therapy hours.

h. Research. (10 hours maximum per renewal period, effective July 1, 2014). One may receive one clock hour of continuing education per hour of planning or conduct of, or participation in, counseling or counseling-related research. To qualify, this activity must constitute an original and substantive educational experience for the learner. Verification will consist of a letter from the faculty member or researcher.

i. ...

C. Approved Content Areas. Continuing education hours must be in one of the following 14 content areas.

1. - 5. ...

6. Lifestyle and Career Development—includes studies that provide a broad understanding of career development theories, occupational and educational information sources and systems, career and leisure counseling, guidance, and education; lifestyle and career decision-making, career development program planning and resources, and effectiveness evaluation.

7. - 12. ...

13. Abnormal—includes studies of emotional and mental disorders experienced by persons of all ages, characteristics of disorders, common nosologies of emotional and mental disorders utilized within the U.S. health care system, and the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, as published by the American Psychiatric Association. This includes studies of preferred treatment approaches for disorders based on research, common medications used by psychiatrists to treat disorders, and working with other health care and mental health care professionals in treating individuals with emotional and mental disorders.

14. Psychopharmacology—includes the scientific study of the effects of drugs on mood, sensation, thinking, and behavior. This also includes a range of substances with various types of psychoactive properties, which involves drugs used in the treatment of psychopathological disorders and drugs of abuse, and focuses on the chemical interactions with the brain.

D. - D.8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 18:271 (March 1992), amended LR 26:494 (March 2000), LR 29:135 (February 2003), LR 39:

Chapter 9. Fees

§901. General

A. The board shall collect the following fees:

1. Licensure Application, License and Seal \$200
2. Privileging Designation Review/Application (review for Appraisal, board Approved Supervisor and Other Specialty Areas)/Registration of Supervision \$100
3. Renewal of Privileged Designation (for Appraisal, board Approved Supervisor, board Approved Supervisor Candidate or Other Specialty/Expertise Areas) \$50
4. - 7. ...
8. Copy of File \$25
9. ...

B. Late fees will be incurred the day after a licensee's designated renewal deadline (no grace period). No part of any fee shall be refundable under any conditions. All application fees for registration of supervision and licensure must be paid to the board by certified check or money order. All other fees, including renewals, may be paid by personal check. The renewal shall be deemed timely when:

1. ...
2. the renewal is postmarked and mailed on or before the due date. The timeliness of the mailing shall be shown only by an official United States postmark or by official receipt or certificate from the United States Postal Service made at the time of mailing which indicates the date thereof. For purpose of this Section, "by mail" applies only to the United States Postal Service.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:136 (February 2003), amended LR 29:2783 (December 2003), LR 39:

§903. Deposit and Use of Fees and Funds

A. All fees collected and all gifts or grants shall be deposited and credited to the account of the board in a licensed financial institution of the board's choosing. The funds of the board may be used for printing, travel expenses of the board, and for other necessary expenses as are essential to carrying out of the provisions of R.S. 37:1101-1122. Expenses shall be paid under the written direction of the chair of the board in accordance with procedures established by the Division of Administration. Any surplus at the end of the fiscal year shall be retained by the board for future expenditures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:84 (February 1988), amended by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:137 (February 2003), LR 39:

Chapter 11. Endorsement and Expedited Processing

§1101. Endorsement

A. Upon recommendation of the board, the board shall issue a license to any person who has been licensed as a licensed professional counselor and has actively practiced

mental health counseling for at least five years in another jurisdiction. The applicant must submit an application on forms prescribed by the board in the prescribed manner and pay the required licensure fee. Applicants must also provide proof of having passed the National Counselor Examination (NCE) or the National Clinical Mental Health Counseling Examination (NCMHCE) or successfully complete an oral exam administered by the board. An applicant must submit documentation of at least 40 CEHs, in accordance with the requirements listed in Chapter 8, within two years of the date of application for licensure endorsement in Louisiana. An applicant must also be in good standing in all jurisdictions in which they are licensed and must not have been disciplined in any jurisdiction for an act that would have constituted grounds for refusal, suspension, or revocation of a license to practice mental health counseling in the state of Louisiana at the time the act was committed.

B. Upon recommendation of the board, the board shall issue a license to any person licensed as a licensed as a licensed professional counselor for less than five years in another jurisdiction whose requirements for the license are substantially equivalent to or exceed the requirements of the state of Louisiana. The applicant must submit an application on forms prescribed by the board in the prescribed manner and pay the required licensure fee. Applicants must also provide proof of having passed the National Counselor Examination (NCE) or the National Clinical Mental Health Counseling Examination (NCMHCE). An applicant must also be in good standing in all jurisdictions in which they are licensed and must not have been disciplined in any jurisdiction for an act that would have constituted grounds for refusal, suspension, or revocation of a license to practice mental health counseling in the state of Louisiana at the time the act was committed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 39:

§1103. Expedited Processing

A. The board does not issue temporary practice permits; however, expedited application processing is available. The applicant must submit the completed application (i.e. for licensure, registration, etc.), expedited processing application, and the required fee. Upon receipt of the aforementioned items, the applicant will receive a response from a board staff member within five business days informing the applicant of the status of their application. If the application materials submitted do not contain all of the necessary documents to complete the application, the application will be reviewed on the following Application Review Date and the expedited processing application fee will not be refunded.

B. All applicants whom board staff determines should be denied or reviewed by the board must be presented to the board at the next regularly scheduled board meeting. Therefore, a verdict of denial may not be achieved within five business days of receipt of all application materials for expedited processing. Those applicants whom board staff determines should be approved will receive notification of approval within five business days.

C. Military personnel (active duty and veterans honorably discharged within five years of the application

date) and their spouses who are appropriately licensed in another jurisdiction will receive a status update from the board within thirty days pertaining to approval or denial of the application. Such applicants must provide proof of military status via DD Form 214 as part of the completed application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 39:

Chapter 13. Disciplinary Proceedings for Licensed Professional Counselors

§1303. Disciplinary Process and Procedures

A. - B. ...

C. The purpose of a disciplinary proceeding is to determine contested issues of law and fact; whether the person did certain acts or omissions and, if he/she did, whether those acts or omissions violated the Louisiana Mental Health Counselor Licensing Act, the rules and regulations of the board, the Code of Ethics of the American Counseling Association, or prior final decisions and/or consent orders involving the licensed professional counselor or applicant for licensure and to determine the appropriate disciplinary action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 25:259 (February 1999), amended by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:137 (February 2003), LR 39:

§1305. Initiation of Complaints

A. ...

B. All complaints shall be addressed confidential to the Ad Hoc Committee for Disciplinary Affairs of the board and shall be sent to the board office. The Ad Hoc Committee for Disciplinary Affairs shall recommend to the board to investigate the charges or dismiss the charges. By majority vote, the board shall accept or reject the recommendations of the Ad Hoc Committee for Disciplinary Affairs. If the board elects to dismiss allegations, the chair of the board shall request the Ad Hoc Committee for Disciplinary Affairs to prepare the letters of dismissal. If the board agrees to investigate, the board shall request the Ad Hoc Committee for Disciplinary Affairs to notify the person against whom allegations have been made of a possible breach of statute, rule and regulation, ethical code, and/or prior final decisions or consent orders may have been made and that a response in writing to the board within a specified time period is required. A response is to be made to the Ad Hoc Committee for Disciplinary Affairs of the board at the board office address. The complaint letter of alleged violations shall not be given initially to the person. However, sufficiently specific allegations shall be conveyed to the person for response. Once the person has answered the complaint, a determination will be made if a disciplinary proceeding is required.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 25:260 (February 1999), amended LR 26:496 (March 2000), LR 29:138 (February 2003), LR 39:

§1309. Formal Hearing

A. - C.3. ...

4. A time and place for a hearing is fixed by the chair or an agent of the board.

5. - 6. ...

7.a. The chair, or an authorized agent of the board, issues subpoenas for the board for disciplinary proceedings, and when requested to do so, may issue subpoenas for the other party. Subpoenas include:

i. ...

ii. a subpoena duces tecum, which requires that a person produce books, records, correspondence, or other materials over which he/she has custody.

7.b. - 8.d. ...

9. The chair of the board presides and the customary order of proceedings at a hearing is as follows.

a. The board's representative makes an opening statement of what he/she intends to prove, and what action, he/she wants the board to take.

b. The person, or the person's attorney, makes an opening statement, explaining why he/she believes that the charges are not legally founded.

9.c. - 14.c.iv. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 25:260 (February 1999), amended LR 26:496 (March 2000), LR 29:138 (February 2003), LR 39:

§1311. Consent Order

A. An order involving some type of disciplinary action may be made by the board with the consent of the person. A consent order requires formal consent of 6 of 11 members of the board. It is not the result of the board's deliberation; it is the board's acceptance of an agreement reached between the board and the person. The consent order is issued by the board to carry out the parties' agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 25:262 (February 1999), amended LR 29:140 (February 2003), LR 39:

§1321. Reinstatement of Suspended or Revoked License

A. The board is authorized to suspend the license of a licensed professional counselor for a period not exceeding two years. At the end of this period, the board shall re-evaluate the suspension and may recommend to the chair the reinstatement or revocation of the license. A person whose license has been revoked may apply for reinstatement after a period of not less than two years from the date such denial or revocation is legally effective. The board may, upon favorable action by a majority of the board members present and voting, recommend such reinstatement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of

Examiners, LR 25:263 (February 1999), amended LR 29:141 (February 2003), LR 39:

§1323. Declaratory Statements

A. - A.1.b. ...

c. a concise statement of the manner in which the petitioner is aggrieved by the statute, rules and regulations, or provision of the code of ethics by its potential application to him or her in which he or she is uncertain of its effect.

2. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 25:263 (February 1999), amended LR 29:141 (February 2003), LR 39:

Chapter 15. Privileged Communication for Licensed Professional Counselors

§1505. Client Records

A. The State of Louisiana requires adult client records be maintained a minimum of 6 years according to R.S. 40:1299.41. Client records for minors must be maintained a minimum of 7 years past the age of majority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 39:

Chapter 17. Exclusions for Licensed Professional Counselors

§1703. Exemptions

A. ...

B. Any nonresident temporarily employed in this state to render mental health counseling services for not more than 30 days a year, who meets the requirements for licensure in R.S. 37:1107 or who holds a valid license and certificate issued under the authority of the laws of another state. During a declared state of emergency a licensed, certified or registered mental health counselor in another jurisdiction may serve in the state for up to 60 days. The board must preapprove any exception to this rule.

C. Any student in an accredited education institution, while carrying out activities that are part of the prescribed course of study, provided such activities are supervised by a professional mental health counselor. Such student shall hold oneself out to the public only by clearly indicating his/her student status and the profession in which he/she is being trained.

D. - E. ...

F. Any person with a master's degree in counseling while practicing mental health counseling under the board-approved supervision of a licensed professional counselor. The supervisee must use the title "counselor intern" and shall not represent oneself to the public as a licensed professional counselor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:85 (February 1988), amended by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:545 (July 1989), LR 22:103 (February 1996), LR 29:142 (February 2003), LR 39:

Chapter 21. Code of Conduct for Licensed Professional Counselors

§2101. Preamble

A. - B. ...

C. Mental health counseling is defined as assisting an individual or group through psychotherapy by rendering or offering prevention, assessment, diagnosis, and treatment, which includes psychotherapy of mental, emotional, behavioral, and addiction disorders. This professional relationship empowers diverse individuals, families, and groups to accomplish mental health, wellness, education, and career goals.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:622 (August 1989), amended LR 24:438 (March 1998), LR 29:142 (February 2003), LR 39:

§2103. Counseling Relationship

A. Counselors encourage client growth and development in ways that foster the interest and welfare of clients and promote formation of healthy relationships. Counselors actively attempt to understand the diverse cultural backgrounds of the clients they serve. Counselors also explore their own cultural identities and how these affect their values and beliefs about the counseling process. Counselors are encouraged to contribute to society by devoting a portion of their professional activity to services for which there is little or no financial return (pro bono publico).

1. Welfare of Those Served by Counselors

a. **Primary Responsibility.** The primary responsibility of counselors is to respect the dignity and to promote the welfare of clients.

b. **Records.** Counselors maintain records necessary for rendering professional services to their clients and as required by laws (see Chapter 15, §1505.A.), regulations, or agency or institution procedures. Counselors include sufficient and timely documentation in their client records to facilitate the delivery and continuity of needed services. Counselors take reasonable steps to ensure that documentation in records accurately reflects client progress and services provided. If errors are made in client records, counselors take steps to properly note the correction of such errors according to agency or institutional policies.

c. **Counseling Plans.** Counselors and their clients work jointly in devising integrated, counseling plans that offer reasonable promise of success and are consistent with abilities and circumstances of clients. Counselors and clients regularly review counseling plans to ensure their continued viability and effectiveness, respecting the freedom of choice of clients.

d. **Support Network Involvement.** Counselors recognize that support networks hold various meanings in the lives of clients and consider enlisting the support, understanding, and involvement of others (e.g., religious/spiritual/community leaders, family members, friends) as positive resources, when appropriate, with client consent.

e. **Employment Needs.** Counselors work with their clients considering employment in jobs that are consistent with the overall abilities, vocational limitations, physical restrictions, general temperament, interest and aptitude patterns, social skills, education, general qualifications, and other relevant characteristics and needs of clients. When appropriate, counselors appropriately trained in career development will assist in the placement of clients in positions that are consistent with the interest, culture, and the welfare of clients, employers, and/or the public.

2. **Informed Consent in the Counseling Relationship**

a. **Informed Consent.** Clients have the freedom to choose whether to enter into or remain in a counseling relationship and need adequate information about the counseling process, and the counselor. Counselors have an obligation to review in writing and verbally with clients the rights and responsibilities of both the counselor and the client. Informed consent is an ongoing part of the counseling process, and counselors appropriately document discussions of informed consent throughout the counseling relationship.

b. **Types of Information Needed.** Counselors explicitly explain to clients the nature of all services provided. They inform clients about issues such as, but not limited to, the following: the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services; the counselor's qualifications, credentials, and relevant experience; continuation of services upon the incapacitation or death of a counselor; and other pertinent information. Counselors take steps to ensure that clients understand the implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements. Clients have the right to confidentiality and to be provided with an explanation of its limitations (including how supervisors, and/or treatment team professionals are involved); to obtain clear information about their records; to participate in the ongoing counseling plans; and to refuse any services or modality change and to be advised of the consequences of such refusal.

c. **Development and Cultural Sensitivity.** Counselors communicate information in ways that are both developmentally and culturally appropriate. Counselors use clear and understandable language when discussing issues related to informed consent. When clients have difficulty understanding the language used by counselors, they provide necessary services (e.g., arranging for a qualified interpreter or translator) to ensure comprehension by clients. In collaboration with clients, counselors consider cultural implications of informed consent procedures and, where possible, counselors adjust their practices accordingly.

d. **Inability to Give Consent.** When counseling minors or persons unable to give voluntary consent, counselors seek the assent of clients to services, and include them in decision making as appropriate. Counselors recognize the need to balance the ethical rights of clients to make choices, their capacity to give consent or assent to receive services, and parental or familial legal rights and responsibilities to protect these clients and make decisions on their behalf.

3. **Clients Served by Others.** When counselors learn that their clients are in a professional relationship with another mental health professional, they request written release of information that the clients sign in order to

communicate with other professionals and strive to establish positive and collaborative professional relationships.

4. **Avoiding Harm and Imposing Values**

a. **Avoiding Harm.** Counselors act to avoid harming their clients, trainees, and research participants and to minimize or to remedy unavoidable or unanticipated harm.

b. **Personal Values.** Counselors are aware of their own values, attitudes, beliefs, and behaviors and avoid imposing values that are inconsistent with counseling goals. Counselors respect the diversity of clients, trainers, and research participants.

5. **Roles and Relationships with Clients**

a. **Current Clients.** Sexual or romantic counselor-client interaction or relationships with current clients, their romantic partners, or their family members are prohibited.

b. **Former Clients.** Sexual or romantic-client interactions or relationships with former clients, their romantic partners, or their family members are prohibited for a period of 5 years following the last professional contact. Counselors, before engaging in sexual or romantic interactions or relationships with clients their romantic partners, or client family members after 5 years following the last professional contact, demonstrate forethought and document (in written form) whether the interactions or relationships can be viewed as exploitive in some way and/or whether there is still potential to harm the former client; in cases of potential exploitation and/or harm, the counselor avoids entering such an interaction or relationship.

c. **Nonprofessional Interactions or Relationships (Other Than Sexual or Romantic Interactions or Relationships).** Counselor-client nonprofessional relationships with clients, former clients, their romantic partners or their family members should be avoided, except when the interaction is potentially beneficial to the client.

d. **Potentially Beneficial Interactions.** When a counselor-client nonprofessional interaction with a client or former client may be potentially beneficial to the client or former client, the counselor must document in case records, prior to the interaction (when feasible), the rationale for such an interaction, the potential benefit, and anticipated consequences for the client or former client and other individuals significantly involved with the client or former client. Such interactions should be initiated with appropriate client consent. Where unintentional harm occurs to the client or former client, or to an individual significantly involved with the client or former client, due to the non professional interaction, the counselor must show evidence of an attempt to remedy such harm. Examples of potentially beneficial interactions include, but are not limited to, attending a formal ceremony (e.g., a wedding/commitment ceremony or graduation); purchasing a service or product provided by a client or former client (excepting unrestricted bartering); hospital visits to an ill family member, mutual membership in a professional association, organization, or community.

e. **Role Changes in the Professional Relationship.** When a counselor changes a role from the original or most recent contracted relationship, he or she obtains informed consent from the client and explains the right of the client to refuse services related to the change. Examples of role changes include:

i. changing from individual to relationship or family counseling, or vice versa;

- ii. changing from a nonforensic evaluative role to a therapeutic role, or vice versa;
- iii. changing from a counselor to a researcher role (i.e., enlisting clients as research participants), or vice versa; and
- iv. changing from a counselor to a mediator role, or vice versa.
- v. Clients must be fully informed of any anticipated consequences (e.g., financial, legal, personal, or therapeutic) of counselor role changes.

6. Roles and Relationships at Individual, Group, Institutional and Societal Levels

a. **Advocacy.** When appropriate, counselors advocate at individual, group, institutional, and societal levels to examine potential barriers and obstacles that inhibit access and/or the growth and development of clients.

b. **Confidentiality and Advocacy.** Counselors obtain client consent prior to engaging in advocacy efforts on behalf of an identifiable client to improve the provision of services and to work toward removal of systemic barriers or obstacles that inhibit client access, growth, and development.

7. Multiple Clients

a. When a counselor agrees to provide counseling services to two or more persons who have a relationship, the counselor clarifies at the outset which person or persons are clients and the nature of the relationships the counselor will have with each involved person. If it becomes apparent that the counselor may be called upon to perform potentially conflicting roles, the counselor will clarify, adjust, or withdraw from roles appropriately.

8. Group Work

a. **Screening.** Counselors screen prospective group counseling/therapy participants. To the extent possible, counselors select members whose needs and goals are compatible with goals of the group, who will not impede the group process, and whose well-being will not be jeopardized by the group experience.

b. **Protecting Clients.** In a group setting, counselors take reasonable precautions to protect clients from physical, emotional, or psychological trauma.

9. End-of-Life Care for Terminally Ill Clients

a. **Quality of Care.** Counselors strive to take measures that enable clients

- i. to obtain high quality end-of-life care for their physical, emotional, social, and spiritual needs;
- ii. to exercise the highest degree of self-determination possible;
- iii. to be given every opportunity possible to engage in informed decision making regarding their end-of-life care; and
- iv. to receive complete and adequate assessment regarding their ability to make competent, rational decisions on their own behalf from a mental health professional who is experienced in end-of-life care practice.

b. **Counselor Competence, Choice, and Referral** Recognizing the personal, moral, and competence issues related to end-of-life decisions, counselors may choose to work or not work with terminally ill clients who wish to explore their end-of-life options. Counselors provide appropriate referral information to ensure that clients receive the necessary help.

c. **Confidentiality.** Counselors who provide services to terminally ill individuals who are considering hastening their own deaths have the option of breaking or not breaking confidentiality, depending on applicable laws and the specific circumstances of the situation and after seeking consultation or supervision from appropriate professional and legal parties.

10. Fees and Bartering

a. **Accepting Fees From Agency Clients.** Counselors refuse a private fee or other remuneration for rendering services to persons who are entitled to such services through the counselor's employing agency or institution. The policies of a particular agency may make explicit provisions for agency clients to receive counseling services from members of its staff in private practice. In such instances, the clients must be informed of other options open to them should they seek private counseling services.

b. **Establishing Fees.** In establishing fees for professional counseling services, counselors consider the financial status of clients and locality. In the event that the established fee structure is inappropriate for a client, counselors assist clients in attempting to find comparable services of acceptable cost.

c. **Nonpayment of Fees.** If counselors intend to use collection agencies or take legal measures to collect fees from clients who do not pay for services as agreed upon, they first inform clients of intended actions and offer clients the opportunity to make payment.

d. **Bartering.** Counselors may barter only if the relationship is not exploitive or harmful and does not place the counselor in an unfair advantage, if the client requests it, and if such arrangements are an accepted practice among professionals in the community. Counselors consider the cultural implications of bartering and discuss relevant concerns with clients and document such agreements in a clear written contract.

e. **Receiving Gifts.** Counselors understand the challenges of accepting gifts from clients and recognize that in some cultures, small gifts are a token of respect and showing gratitude. When determining whether or not to accept a gift from clients, counselors take into account the therapeutic relationship, the monetary value of the gift, a client's motivation for giving the gift, and the counselor's motivation for wanting or declining the gift.

11. Termination and Referral

a. **Abandonment Prohibited.** Counselors do not abandon or neglect clients in counseling and inform clients of professional limitations. Counselors assist in making appropriate arrangements for the continuation of treatment, when necessary, during interruptions such as vacations, illness, and following termination.

b. **Inability to Assist Clients.** If counselors determine an inability to be of professional assistance to clients, they avoid entering or continuing counseling relationships. Counselors are knowledgeable about culturally and clinically appropriate referral resources and suggest these alternatives. If clients decline the suggested referrals, counselors should discontinue the relationship.

c. **Appropriate Termination.** Counselors terminate a counseling relationship when it becomes reasonably apparent that the client no longer needs assistance, is not likely to benefit, or is being harmed by continued

counseling. Counselors may terminate counseling when in jeopardy of harm by the client, or another person with whom the client has a relationship, or when clients do not pay fees as agreed upon. Counselors provide pretermination counseling and recommend other service providers when necessary.

d. **Appropriate Transfer of Services.** When counselors transfer or refer clients to other practitioners, they ensure that appropriate clinical and administrative processes are completed and open communication is maintained with both clients and practitioners.

12. Technology Applications

a. **Benefits and Limitations.** Counselors inform clients of the benefits and limitations of using information technology applications in the counseling process and in business/billing procedures. Such technologies include but are not limited to computer hardware and software, telephones, the World Wide Web, the Internet, online assessment instruments and other communication devices.

b. **Technology-Assisted Services.** When providing technology-assisted distance counseling services, counselors determine that clients are intellectually, emotionally, and physically capable of using the application and that the application is appropriate for the needs of clients.

c. **Inappropriate Services.** When technology-assisted distance counseling services are deemed inappropriate by the counselor or client, counselors consider delivering services face to face.

d. **Access.** Counselors provide reasonable access to computer applications when providing technology-assisted distance counseling services.

e. **Laws and Statutes.** Counselors ensure that the use of technology does not violate the laws of any local, state, national, or international entity and observe all relevant statutes.

f. **Assistance.** Counselors seek business, legal, and technical assistance when using technology applications, particularly when the use of such applications crosses state or national boundaries.

g. **Technology and Informed Consent.** As part of the process of establishing informed consent, counselors do the following:

i. Address issues related to the difficulty of maintaining the confidentiality of electronically transmitted communications.

ii. Inform clients of all colleagues, supervisors, and employees, such as Informational Technology (IT) administrators, who might have authorized or unauthorized access to electronic transmissions.

iii. Urge clients to be aware of all authorized or unauthorized users including family members and fellow employees who have access to any technology clients may use in the counseling process.

iv. Inform clients of pertinent legal rights and limitations governing the practice of a profession over state lines or international boundaries.

v. Use encrypted Web sites and e-mail communications to help ensure confidentiality when possible.

vi. When the use of encryption is not possible, counselors notify clients of this fact and limit electronic

transmissions to general communications that are not client specific.

vii. Inform clients if and for how long archival storage of transaction records are maintained.

viii. Discuss the possibility of technology failure and alternate methods of service delivery.

ix. Inform clients of emergency procedures, such as calling 911 or a local crisis hotline, when the counselor is not available.

x. Discuss time zone differences, local customs, and cultural or language differences that might impact service delivery.

xi. Inform clients when technology-assisted distance counseling services are not covered by insurance.

h. **Sites on the World Wide Web.** Counselors maintaining sites on the World Wide Web (the Internet) do the following:

i. Regularly check that electronic links are working and professionally appropriate.

ii. Establish ways clients can contact the counselor in case of technology failure.

iii. Provide electronic links to relevant state licensure and professional certification boards to protect consumer rights and facilitate addressing ethical concerns.

iv. Establish a method for verifying client identity.

v. Obtain the written consent of the legal guardian or other authorized legal representative prior to rendering services in the event the client is a minor child, an adult who is legally incompetent, or an adult incapable of giving informed consent.

vi. Strive to provide a site that is accessible to persons with disabilities.

vii. Strive to provide translation capabilities for clients who have a different primary language while also addressing the imperfect nature of such translations.

viii. Assist clients in determining the validity and reliability of information found on the World Wide Web and other technology applications.

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§2105. Confidentiality, Privileged Communication, and Privacy

A. Counselors recognize that trust is a cornerstone of the counseling relationship. Counselors aspire to earn the trust of clients by creating an ongoing partnership, establishing and upholding appropriate boundaries, and maintaining confidentiality. Counselors communicate the parameters of confidentiality in a culturally competent manner.

1. Respecting Client Rights

a. **Multicultural/Diversity Considerations.** Counselors maintain awareness and sensitivity regarding cultural meanings of confidentiality and privacy. Counselors respect differing views toward disclosure of information. Counselors hold ongoing discussions with clients as to how, when, and with whom information is to be shared.

b. **Respect for Privacy.** Counselors shall respect their clients' right to privacy and avoid legal and unwarranted disclosures of confidential information.

c. Respect for Confidentiality. Counselors do not share confidential information without client consent. The right to privacy may be waived by the client or their legally recognized representative.

d. Explanation of Limitations. At initiation and throughout the counseling process, counselors inform clients of the limitations of confidentiality and seek to identify foreseeable situations in which confidentiality must be breached.

2. Exceptions

a. Danger and Legal Requirements. The general requirement that counselors shall keep information confidential does not apply when disclosure is required because a patient has communicated a threat of physical violence, which is deemed to be significant in the clinical judgment of the counselor, against a clearly identified victim or victims, coupled with the apparent intent and ability to carry out such threat, or when legal requirements otherwise demand that confidential information be revealed. Counselor shall consult with other professionals when in doubt as to the validity of an exception.

b. Contagious, Life-Threatening Diseases. When clients disclose that they have a disease commonly known to be both communicable and life threatening, counselors may be justified in disclosing information to identifiable third parties, if they are known to be at demonstrable and high risk of contracting the disease. Prior to making a disclosure, counselors confirm that there is such a diagnosis and assess the intent of clients to inform the third parties about their disease or to engage in any behaviors that may be harmful to an identifiable third party.

c. Court-Ordered Disclosure. When subpoenaed to release confidential or privileged information without a client's permission, counselors obtain written, informed consent from the client or take steps to prohibit the disclosure or have it limited as narrowly as possible due to potential harm to the client or counseling relationship.

d. Minimal Disclosure. To the extent possible, clients are informed before confidential information is disclosed and are involved in the disclosure decision-making process. When circumstances require the disclosure of confidential information, only essential information is revealed.

3. Information Shared with Others

a. Subordinates. Counselors make every effort to ensure that privacy and confidentiality of clients are maintained by subordinates, including employees, supervisees, students, clerical assistants, and volunteers.

b. Treatment Teams. When client treatment involves a continued review or participation by a treatment team, the client will be informed of the team's existence and composition, information being shared, and the purposes of sharing such information.

c. Confidential Settings. Counselors discuss confidential information only in settings in which they can reasonably ensure client privacy.

d. Third-Party Payers. Counselors disclose information to third-party payers only when clients have authorized such disclosure.

e. Transmitting Confidential Information. Counselors take precautions to ensure the confidentiality of information transmitted through the use of computers,

electronic mail, facsimile machines, telephones, voicemail, answering machines, and other electronic or computer technology.

f. Deceased Clients. Counselors protect the confidentiality of deceased clients, consistent with legal requirements and agency or setting policies.

4. Groups and Families

a. Group Work. In group work, counselors clearly explain the importance and parameters of confidentiality for the specific group being entered.

b. Couples and Family Counseling. In couples and family counseling, counselors clearly define who is considered "the client" and discuss expectations and limitations of confidentiality. Counselors seek agreement and document in writing such agreement among all involved parties having capacity to give consent concerning each individual's right to confidentiality and any obligation to preserve the confidentiality of information known.

5. Clients Lacking Capacity to Give Informed Consent

a. Responsibility to Clients. When counseling minor clients or adult clients who lack the capacity to give voluntary, informed consent, counselors protect the confidentiality of information received in the counseling relationship as specified by federal and state laws, written policies, and applicable ethical standards.

b. Responsibility to Parents and Legal Guardians. Counselors inform parents and legal guardians about the role of counselors and the confidential nature of the counseling relationship. Counselors are sensitive to the cultural diversity of families and respect the inherent rights and responsibilities of parents/guardians over the welfare of their children/charges according to law. Counselors work to establish, as appropriate, collaborative relationships with parents/guardians to best serve clients.

c. Release of Confidential Information. When counseling minor clients or adult clients who lack the capacity to give voluntary consent to release confidential information, counselors seek permission from an appropriate third party to disclose information. In such instances, counselors inform clients consistent with their level of understanding and take culturally appropriate measures to safeguard client confidentiality.

6. Records

a. Confidentiality of Records. Counselors ensure that records are kept in a secure location and that only authorized persons have access to records.

b. Permission to Record. Counselors obtain permission from clients prior to recording sessions through electronic or other means.

c. Permission to Observe. Counselors obtain permission from clients prior to observing counseling sessions, reviewing session transcripts, or viewing recordings of sessions with supervisors, faculty, peers, or others within the training environment.

d. Client Access. Counselors provide reasonable access to records and copies of records when requested by competent clients. Counselors limit the access of clients to their records, or portions of their records, only when there is compelling evidence that such access would cause harm to the client. Counselors document the request of clients and the rationale for withholding some or all of the record in the

files of clients. In situations involving multiple clients, counselors provide individual clients with only those parts of records that related directly to them and do not include confidential information related to any other client.

e. Assistance with Records. When clients request access to their records, counselors provide assistance and consultation in interpreting counseling records.

f. Disclosure or Transfer. Unless exceptions to confidentiality exist, counselors obtain written permission from clients to disclose or transfer records to legitimate third parties. Steps are taken to ensure that receivers of counseling records are sensitive to their confidential nature. If a client who is under the active care of a practitioner licensed by the Louisiana State Board of Medical Examiners is diagnosed with a "serious mental illness" and refuses to sign a release of information in order for the counselor to consult with that practitioner, then the counselor must terminate the relationship in accordance with §2103.11 and refer the client to another mental health professional.

g. Storage and Disposal After Termination. Counselors store records following termination of services to ensure reasonable future access, maintain records in accordance with state and federal statutes governing records, and dispose of client records and other sensitive materials in a manner that protects client confidentiality. When records are of an artistic nature, counselors obtain client (or guardian) consent with regards to handling of such records or documents.

h. Reasonable Precautions. Counselors take reasonable precautions to protect client confidentiality in the event of the counselor's termination of practice, incapacity, or death.

7. Research and Training

a. Institutional Approval. When institutional approval is required, counselors provide accurate information about their research proposals and obtain approval prior to conducting their research. They conduct research in accordance with the approved research protocol.

b. Adherence to Guidelines. Counselors are responsible for understanding and adhering to state, federal, agency, or institutional policies or applicable guidelines regarding confidentiality in their research practices.

c. Confidentiality of Information Obtained in Research. Violations of participant privacy and confidentiality are risks of participation in research involving human participants. Investigators maintain all research records in a secure manner. They explain to participants the risks of violations of privacy and confidentiality and disclose to participants any limits of confidentiality that reasonably can be expected. Regardless of the degree to which confidentiality will be maintained, investigators must disclose to participants any limits of confidentiality that reasonably can be expected.

d. Disclosure of Research Information. Counselors do not disclose confidential information that reasonably could lead to the identification of a research participant unless they have obtained the prior consent of the person. Use of data derived from counseling relationships for purposes of training, research, or publication is confined to content that is disguised to ensure the anonymity of the individuals involved.

e. Agreement for Identification. Identification of clients, or students, or supervisees in a presentation or publication is permissible only when they have reviewed the material and agreed to its presentation or publication.

8. Consultation

a. Agreements. When acting as consultants, counselors seek agreements among all parties involved concerning each individual's rights to confidentiality, the obligation of each individual to preserve confidential information, and the limits of confidentiality of information shared by others.

b. Respect for Privacy. Information obtained in a consulting relationship is discussed for professional purposes only with persons directly involved with the case. Written and oral reports present only data germane to the purposes of the consultation, and every effort is made to protect client identity and to avoid undue invasion of privacy.

c. Disclosure of Confidential Information. When consulting with colleagues, counselors do not disclose confidential information that reasonably could lead to the identification of a client or other person or organization with whom they have a confidential relationship unless they have obtained the prior consent of the person or organization or the disclosure cannot be avoided. They disclose information only to the extent necessary to achieve the purposes of the consultation.

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§2107. Professional Responsibilities

A. Counselors aspire to open, honest, and accurate communication in dealing with the public and other professionals. They practice in a non-discriminatory manner within the boundaries of professional and personal competence and have a responsibility to abide by the Code of Conduct and Standards of Practice. Counselors actively participate in local, state, and national associations that foster the development and improvement of counseling. Counselors advocate to promote change at the individual, group, institutional, and societal levels that improves the quality of life for individuals and groups and remove potential barriers to the provision or access of appropriate services being offered. Counselors have a responsibility to the public to engage in counseling practices that are based on rigorous research methodologies. In addition, counselors engage in self-care activities to maintain and promote their emotional, physical, mental, and spiritual well-being to best meet their professional responsibilities.

1. Knowledge of Standards

a. Counselors have a responsibility to read, understand, and follow the Code of Conduct and Standards of Practice and adhere to applicable laws and regulations.

2. Professional Competence

a. Boundaries of Competence. Counselors practice only within the boundaries of their competence, based on their education, training, supervised experience, state and national professional credentials, and appropriate professional experience. Counselors gain knowledge,

personal awareness, sensitivity, and skills pertinent to working with a diverse client population. All licensees must submit to the board a written statement of area(s) of intended practice along with supporting documentation of qualifications for the respective area(s) in which practice is intended.

b. **New Specialty Areas of Practice.** Counselors practice in specialty areas new to them only after appropriate education, training, and supervised experience. While developing skills in new specialty areas, counselors take steps to ensure the competence of their work and to protect others from possible harm. All licensees must submit to the board a written statement of new area(s) of intended practice along with supporting documentation of qualifications for the respective area(s) in which practice is intended before claiming said specialty area(s). At the discretion of the board an oral examination may be required before approval of specialty area(s).

c. **Qualified for Employment.** Counselors accept employment only for positions for which they are qualified by education, training, supervised experience, state and national professional credentials, and appropriate professional experience. Counselors hire for professional counseling positions only individuals who are qualified and competent for those positions.

d. **Monitor Effectiveness.** Counselors continually monitor their effectiveness as professionals and take steps to improve when necessary. Counselors in private practice take reasonable steps to seek peer supervision as needed to evaluate their efficacy as counselors.

e. **Consultation on Ethical Obligations.** Counselors take reasonable steps to consult with other counselors or related professionals when they have questions regarding their ethical obligations or professional practice.

f. **Continuing Education.** Counselors recognize the need for continuing education to acquire and maintain a reasonable level of awareness of current scientific and professional information in their fields of activity. They take steps to maintain competence in the skills they use, are open to new procedures, and keep current with the diverse populations and specific populations with whom they work.

g. **Impairment.** Counselors are alert to the signs of impairment from their own physical, mental, or emotional problems and refrain from offering or providing professional services when such impairment is likely to harm a client or others. They seek assistance for problems that reach the level of professional impairment, and, if necessary, they limit, suspend, or terminate their professional responsibilities until such time it is determined that they may safely resume their work. Counselors assist colleagues or supervisors in recognizing their own professional impairment and provide consultation and assistance when warranted with colleagues or supervisors showing signs of impairment and intervene as appropriate to prevent imminent harm to clients.

h. **Counselor Incapacitation or Termination of Practice.** When counselors leave a practice, they follow a prepared plan for transfer of clients and files. Counselors prepare and disseminate to an identified colleague or "records custodian" a plan for the transfer of clients and files in the case of their incapacitation, death, or termination of practice. (See §2105.A.6.h.)

3. Advertising and Soliciting Clients

a. **Accurate Advertising.** When advertising or otherwise representing their services to the public, counselors identify their credentials in an accurate manner that is not false, misleading, deceptive, or fraudulent.

b. **Testimonials.** Counselors who use testimonials do not solicit them from current clients nor former clients nor any other persons who may be vulnerable to undue influence.

c. **Statements by Others.** Counselors make reasonable efforts to ensure that statements made by others about them or the profession of counseling are accurate.

d. **Recruiting Through Employment.** Counselors do not use their places of employment or institutional affiliation to recruit or gain clients, supervisees, or consultees for their private practices.

e. **Products and Training Advertisements.** Counselors who develop products related to their profession or conduct workshops or training events ensure that the advertisements concerning these products or events are accurate and disclose adequate information for consumers to make informed choices.

f. **Promoting to Those Served.** Counselors do not use counseling, teaching, training, or supervisory relationships to promote their products or training events in a manner that is deceptive or would exert undue influence on individuals who may be vulnerable. However, counselor educators may adopt textbooks they have authored for instructional purposes.

4. Professional Qualifications

a. **Accurate Representation.** Counselors claim or imply only professional qualifications actually completed and correct any known misrepresentations of their qualifications by others. Counselors truthfully represent the qualifications of their professional colleagues. Counselors clearly distinguish between paid and volunteer work experience and accurately describe their continuing education and specialized training.

b. **Credentials.** Counselors claim only licenses or certifications that are current and in good standing.

c. **Educational Degrees.** Counselors clearly differentiate between earned and honorary degrees.

d. **Implying Doctoral-Level Competence .** Counselors clearly state their highest earned degree in counseling or closely related field. Counselors do not imply doctoral-level competence when only possessing a master's degree in counseling or a related field by referring to themselves as "Dr." in a counseling context when their doctorate is not in counseling or related field. A doctoral degree in counseling or a closely related field is defined as a doctoral degree from a regionally accredited university that shall conform to one of the criteria below:

i. a CACREP accredited doctoral counseling program;

ii. a doctoral counseling program incorporating the work "counseling" or "counselor" in its title;

iii. a doctoral program incorporating a counseling related term in its title (e.g., "Marriage and Family Therapy"); or

iv. a doctoral program in a behavioral science that would augment the counseling skills of a licensed professional counselor.

e. Program Accreditation Status. Counselors clearly state the accreditation status of their degree programs at the time the degree was earned.

f. Professional Membership. Counselors clearly differentiate between current, active memberships and former memberships in associations. Members of the American Counseling Association must clearly differentiate between professional membership, which implies the possession of at least a master's degree in counseling, and regular membership, which is open to individuals whose interests and activities are consistent with those of ACA but are not qualified for professional membership.

5. Nondiscrimination

a. Counselors do not condone or engage in discrimination based on age, culture, disability, ethnicity, race, religion/spirituality, gender, gender identity, sexual orientation, marital status/partnership, language preference, socioeconomic status, or any basis proscribed by law. Counselors do not discriminate against clients, students, employees, supervisees, or research participants in a manner that has a negative impact on these persons.

6. Public Responsibility

a. Sexual Harassment. Counselors do not engage in or condone sexual harassment. Sexual harassment is defined as sexual solicitation, physical advances, or verbal or nonverbal conduct that is sexual in nature, that occurs in connection with professional activities or roles, and that either

i. is unwelcome, is offensive, or creates a hostile workplace or learning environment, and counselors know or are told this; or

ii. is sufficiently severe or intense to be perceived as harassment to a reasonable person in the context in which the behavior occurred. Sexual harassment can consist of a single intense or severe act or multiple persistent or pervasive acts.

b. Reports to Third Parties. Counselors are accurate, honest, and objective in reporting their professional activities and judgments to appropriate third parties, including courts, health insurance companies, those who are the recipients of evaluation reports, and others.

c. Media Presentations. When counselors provide advice or comment by means of public lectures, demonstrations, radio or television programs, prerecorded tapes, technology-based applications, printed articles, mailed material, or other media, they take reasonable precautions to ensure that:

i. the statements are based on appropriate professional counseling literature and practice,

ii. the statements are otherwise consistent with the Code of Conduct, and

iii. the recipients of the information are not encouraged to infer that a professional counseling relationship has been established.

d. Exploitation of Others. Counselors do not exploit others in their professional relationships.

e. Scientific Bases for Treatment Modalities. Counselors use techniques/ procedures/modalities that are grounded in theory and/or have an empirical or scientific foundation. Counselors who do not must define the techniques/procedures as "unproven" or "developing" and explain the potential risks and ethical considerations of using

such techniques/procedures and take steps to protect clients from possible harm.

7. Responsibility to Other Professionals

a. Personal Public Statements. When making personal statements in a public context, counselors clarify that they are speaking from their personal perspectives and that they are not speaking on behalf of all counselors or the profession.

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§2109. Relationships with Other Professionals

A. Professional counselors recognize that the quality of their interactions with colleagues can influence the quality of services provided to clients. They work to become knowledgeable about colleagues within and outside the field of counseling. Counselors develop positive working relationships and systems of communication with colleagues to enhance services to clients.

1. Relationships With Colleagues, Employers, and Employees

a. Different Approaches. Counselors are respectful of approaches to counseling services that differ from their own. Counselors are respectful of traditions and practices of other professional groups with which they work.

b. Forming Relationships. Counselors work to develop and strengthen interdisciplinary relations with colleagues from other disciplines to best serve clients.

c. Interdisciplinary Teamwork. Counselors who are members of interdisciplinary teams delivering multifaceted services to clients keep the focus on how to best serve the clients. They participate in and contribute to decisions that affect the well-being of clients by drawing on the perspectives, values, and experiences of the counseling profession and those of colleagues from other disciplines.

d. Confidentiality. When counselors are required by law, institutional policy, or extraordinary circumstances to serve in more than one role in judicial or administrative proceedings, they clarify role expectations and the parameters of confidentiality with their colleagues.

e. Establishing Professional and Ethical Obligations. Counselors who are members of interdisciplinary teams clarify professional and ethical obligations of the team as a whole and of its individual members. When a team decision raises ethical concerns, counselors first attempt to resolve the concern within the team. If they cannot reach resolution among team members, counselors pursue other avenues to address their concerns consistent with client well-being.

f. Personnel Selection and Assignment. Counselors select competent staff and assign responsibilities compatible with their skills and experiences.

g. Employer Policies. The acceptance of employment in an agency or institution implies that counselors are in agreement with its general policies and principles. Counselors strive to reach agreement with employers as to acceptable standards of conduct that allow for changes in institutional policy conducive to the growth and development of clients.

h. Negative Conditions. Counselors alert their employers of inappropriate policies and practices. They attempt to effect changes in such policies or procedures through constructive action within the organization. When such policies are potentially disruptive or damaging to clients or may limit the effectiveness of services provided and change cannot be effected, counselors take appropriate further action. Such action may include referral to appropriate certification, accreditation, or state licensure organizations, or voluntary termination of employment.

i. Protection From Punitive Action. Counselors take care not to harass or dismiss an employee who has acted in a responsible and ethical manner to expose inappropriate employer policies or practices.

2. Consultation

a. Consultant Competency. Counselors take reasonable steps to ensure that they have the appropriate resources and competencies when providing consultation services. Counselors provide appropriate referral resources when requested or needed.

b. Understanding Consultees. When providing consultation, counselors attempt to develop with their consultees a clear understanding of problem definition, goals for change, and predicted consequences of interventions selected.

c. Consultant Goals. The consulting relationship is one in which consultee adaptability and growth toward self-direction are consistently encouraged and cultivated.

d. Informed Consent in Consultation. When providing consultation, counselors have an obligation to review, in writing and verbally, the rights and responsibilities of both counselors and consultees. Counselors use clear and understandable language to inform all parties involved about the purpose of the services to be provided, relevant costs, potential risks and benefits, and the limits of confidentiality. Working in conjunction with the consultee, counselors attempt to develop a clear definition of the problem, goals for change, and predicted consequences of interventions that are culturally responsive and appropriate to the needs of consultees.

e. Consultation with Medical Practitioners. In the event a client is diagnosed with a "serious mental illness", counselors must consult and collaborate on an ongoing basis with a practitioner who is licensed by the Louisiana State Board of Medical Examiners and is authorized to prescribe medications in the management of psychiatric illness.

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HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:625 (August 1989), amended LR 24:443 (March 1998), LR 29:146 (February 2003), LR 39:

§2113. Supervision, Training, and Teaching

A. Counselors aspire to foster meaningful and respectful professional relationships and to maintain appropriate boundaries with supervisees and students. Counselors have theoretical and pedagogical foundations for their work and aim to be fair, accurate, and honest in their assessments of counselors-in-training.

1. Counselor Supervision and Client Welfare

a. Client Welfare. A primary obligation of counseling supervisors is to monitor the services provided by other counselors or counselors-in-training. Counseling

supervisors monitor client welfare and supervisee clinical performance and professional development. To fulfill these obligations, supervisors meet regularly with supervisees to review case notes, samples of clinical work, or live observations. Supervisees have a responsibility to understand and follow the Code of Conduct and Standards of Practice.

b. Counselor Credentials. Counseling supervisors work to ensure that clients are aware of the qualifications of the supervisees who render services to the clients.

c. Informed Consent and Client Rights. Supervisors make supervisees aware of client rights including the protection of client privacy and confidentiality in the counseling relationship. Supervisees provide clients with professional disclosure information and inform them of how the supervision process influences the limits of confidentiality. Supervisees make clients aware of who will have access to records of the counseling relationship and how these records will be used.

2. Counselor Supervision Competence

a. Supervisor Preparation. Prior to offering clinical supervision services, counselors are trained in supervision methods and techniques. Counselors who offer clinical supervision services regularly pursue continuing education activities including both counseling and supervision topics and skills.

b. Multicultural Issues/Diversity in Supervision. Counseling supervisors are aware of and address the role of multiculturalism/diversity in the supervisory relationship.

3. Supervisory Relationships

a. Relationship Boundaries With Supervisees. Counseling supervisors clearly define and maintain ethical professional, personal, and social relationships with their supervisees. Counseling supervisors avoid nonprofessional relationships with current supervisees. If supervisors must assume other professional roles (e.g., clinical and administrative supervisor, instructor) with supervisees, they work to minimize potential conflicts and explain to supervisees the expectations and responsibilities associated with each role. They do not engage in any form of nonprofessional interaction that may compromise the supervisory relationship.

b. Sexual Relationships. Sexual or romantic interactions or relationships with current supervisees are prohibited.

c. Sexual Harassment. Counseling supervisors do not condone or subject supervisees to sexual harassment.

d. Close Relatives and Friends. Counseling supervisors avoid accepting close relatives, romantic partners, or friends as supervisees.

e. Potentially Beneficial Relationships. Counseling supervisors are aware of the power differential in their relationships with supervisees. If they believe nonprofessional relationships with a supervisee may be potentially beneficial to the supervisee, they take precautions similar to those taken by counselors when working with clients. Examples of potentially beneficial interactions or relationships include attending a formal ceremony; hospital visits; providing support during a stressful event; or mutual membership in a professional association, organization, or community. Counseling supervisors engage in open discussions with supervisees when they consider entering

into relationships with them outside of their roles as clinical and/or administrative supervisors. Before engaging in nonprofessional relationships, supervisors discuss with supervisees and document the rationale for such interactions, potential benefits or drawbacks, and anticipated consequences for the supervisee. Supervisors clarify the specific nature and limitations of the additional role(s) they will have with the supervisee.

4. Supervisor Responsibilities

a. **Informed Consent for Supervision.** Supervisors are responsible for incorporating into their supervision the principles of informed consent and participation. Supervisors inform supervisees of the policies and procedures to which they are to adhere and the mechanisms for due process appeal of individual supervisory actions.

b. **Emergencies and Absences.** Supervisors establish and communicate to supervisees procedures for contacting them or, in their absence, alternative on-call supervisors to assist in handling crises.

c. **Standards for Supervisees.** Supervisors make their supervisees aware of professional and ethical standards and legal responsibilities. Supervisors of postdegree counselors encourage these counselors to adhere to professional standards of practice.

d. **Termination of the Supervisory Relationship.** Supervisors or supervisees have the right to terminate the supervisory relationship with adequate notice. Reasons for withdrawal are provided to the other party. When cultural, clinical, or professional issues are crucial to the viability of the supervisory relationship, both parties make efforts to resolve differences. When termination is warranted, supervisors make appropriate referrals to possible alternative supervisors.

5. Counseling Supervision Evaluation, Remediation, and Endorsement

a. **Evaluation.** Supervisors document and provide supervisees with ongoing performance appraisal and evaluation feedback and schedule periodic formal evaluative sessions throughout the supervisory relationship.

b. **Limitations.** Through ongoing evaluation and appraisal, supervisors are aware of the limitations of supervisees that might impede performance. Supervisors assist supervisees in securing remedial assistance when needed. They recommend dismissal from training programs, applied counseling settings, or state or voluntary professional credentialing processes when those supervisees are unable to provide competent professional services. Supervisors seek consultation and document their decisions to dismiss or refer supervisees for assistance. They ensure that supervisees are aware of options available to them to address such decisions.

c. **Counseling for Supervisees.** If supervisees request counseling, supervisors provide them with acceptable referrals. Counselors do not provide counseling services to their supervisees. Supervisors address interpersonal competencies in terms of the impact of these issues on clients, the supervisory relationship, and professional functioning. (See F.3.a.)

d. **Endorsement.** Supervisors endorse supervisees for certification, licensure, employment, or completion of an academic or training program only when they believe supervisees are qualified for the endorsement. Regardless of

qualifications, supervisors do not endorse supervisees whom they believe to be impaired in any way that would interfere with the performance of the duties associated with the endorsement.

6. Responsibilities of Counselor Educators

a. **Counselor Educators.** Counselor educators who are responsible for developing, implementing, and supervising educational programs are skilled as teachers and practitioners. They are knowledgeable regarding the ethical, legal, and regulatory aspects of the profession, are skilled in applying that knowledge, and make students and supervisees aware of their responsibilities. Counselor educators conduct counselor education and training programs in an ethical manner and serve as role models for professional behavior.

b. **Infusing Multicultural Issues/Diversity.** Counselor Educators infuse material related to multiculturalism/diversity into all courses and workshops for the development of professional counselors.

c. **Integration of Study and Practice.** Counselor educators establish education and training programs that integrate academic study and supervised practice.

d. **Teaching Ethics.** Counselor educators make students and supervisees aware of the ethical responsibilities and standards of the profession and the ethical responsibilities of students to the profession. Counselor educators infuse ethical considerations throughout the curriculum.

e. **Peer Relationships.** Counselor educators make every effort to ensure that the rights of peers are not compromised when students or supervisees lead counseling groups or provide clinical supervision. Counselor educators take steps to ensure that students and supervisees understand they have the same ethical obligations as counselor educators, trainers, and supervisors.

f. **Innovative Theories and Techniques.** When counselor educators teach counseling techniques/procedures that are innovative, without an empirical foundation, or without a well-grounded theoretical foundation, they define the counseling techniques/procedures as “unproven” or “developing” and explain to students the potential risks and ethical considerations of using such techniques/procedures.

g. **Field Placements.** Counselor educators develop clear policies within their training programs regarding field placement and other clinical experiences. Counselor educators provide clearly stated roles and responsibilities for the student or supervisee, the site supervisor, and the program supervisor. They confirm that site supervisors are qualified to provide supervision and inform site supervisors of their professional and ethical responsibilities in this role.

h. **Professional Disclosure.** Before initiating counseling services, counselors-in-training disclose their status as students and explain how this status affects the limits of confidentiality. Counselor educators ensure that the clients at field placements are aware of the services rendered and the qualifications of the students and supervisees rendering those services. Students and supervisees obtain client permission before they use any information concerning the counseling relationship in the training process.

7. Student Welfare

a. **Orientation.** Counselor educators recognize that orientation is a developmental process that continues

throughout the educational and clinical training of students. Counseling faculty provide prospective students with information about the counselor education program's expectations:

- i. the type and level of skill and knowledge acquisition required for successful completion of the training;
- ii. program training goals, objectives, and mission, and subject matter to be covered;
- iii. bases for evaluation;
- iv. training components that encourage self-growth or self-disclosure as part of the training process;
- v. the type of supervision settings and requirements of the sites for required clinical field experiences;
- vi. student and supervisee evaluation and dismissal policies and procedures; and
- vii. up-to-date employment prospects for graduates.

b. **Self-Growth Experiences.** Counselor education programs delineate requirements for self-disclosure or self-growth experiences in their admission and program materials. Counselor educators use professional judgment when designing training experiences they conduct that require student and supervisee self-growth or self-disclosure. Students and supervisees are made aware of the ramifications their self-disclosure may have when counselors whose primary role as teacher, trainer, or supervisor requires acting on ethical obligations to the profession. Evaluative components of experiential training experiences explicitly delineate predetermined academic standards that are separate and do not depend on the student's level of self-disclosure. Counselor educators may require trainees to seek professional help to address any personal concerns that may be affecting their competency.

8. Student Responsibilities

a. **Standards for Students.** Counselors-in-training have a responsibility to understand and follow the ACA Code of Ethics and LPC Code of Conduct and adhere to applicable laws, regulatory policies, and rules and policies governing professional staff behavior at the agency or placement setting. Students have the same obligation to clients as those required of professional counselors.

b. **Impairment.** Counselors-in-training refrain from offering or providing counseling services when their physical, mental, or emotional problems are likely to harm a client or others. They are alert to the signs of impairment, seek assistance for problems, and notify their program supervisors when they are aware that they are unable to effectively provide services. In addition, they seek appropriate professional services for themselves to remediate the problems that are interfering with their ability to provide services to others.

9. Evaluation and Remediation of Students

a. **Evaluation.** Counselors clearly state to students, prior to and throughout the training program, the levels of competency expected, appraisal methods, and timing of evaluations for both didactic and clinical competencies. Counselor educators provide students with ongoing performance appraisal and evaluation feedback throughout the training program.

b. **Limitations.** Counselor educators, throughout ongoing evaluation and appraisal, are aware of and address the inability of some students to achieve counseling competencies that might impede performance. Counselor educators

- i. assist students in securing remedial assistance when needed,
- ii. seek professional consultation and document their decision to dismiss or refer students for assistance, and
- iii. ensure that students have recourse in a timely manner to address decisions to require them to seek assistance or to dismiss them and provide students with due process according to institutional policies and procedures.

c. **Counseling for Students.** If students request counseling or if counseling services are required as part of a remediation process, counselor educators provide acceptable referrals.

10. Roles and Relationships between Counselor Educators and Students

a. **Sexual or Romantic Relationships.** Sexual or romantic interactions or relationships with current students are prohibited.

b. **Sexual Harassment.** Counselor educators do not condone or subject students to sexual harassment.

c. **Relationships with Former Students.** Counselor educators are aware of the power differential in the relationship between faculty and students. Faculty members foster open discussions with former students when considering engaging in a social, sexual, or other intimate relationship. Faculty members discuss with the former student how their former relationship may affect the change in relationship.

d. **Nonprofessional Relationships.** Counselor educators avoid nonprofessional or ongoing professional relationships with students in which there is a risk of potential harm to the student or that may compromise the training experience or grades assigned. In addition, counselor educators do not accept any form of professional services, fees, commissions, reimbursement, or remuneration from a site for student or supervisee placement.

e. **Counseling Services.** Counselor educators do not serve as counselors to current students unless this is a brief role associated with a training experience.

f. **Potentially Beneficial Relationships.** Counselor educators are aware of the power differential in the relationship between faculty and students. If they believe a nonprofessional relationship with a student may be potentially beneficial to the student, they take precautions similar to those taken by counselors when working with clients. Examples of potentially beneficial interactions or relationships include, but are not limited to, attending a formal ceremony; hospital visits; providing support during a stressful event; or mutual membership in a professional association, organization, or community. Counselor educators engage in open discussions with students when they consider entering into relationships with students outside of their roles as teachers and supervisors. They discuss with students the rationale for such interactions, the potential benefits and drawbacks, and the anticipated consequences for the student. Educators clarify the specific nature and limitations of the additional role(s) they will have

with the student prior to engaging in a nonprofessional relationship. Nonprofessional relationships with students should be time-limited and initiated with student consent.

11. Multicultural/Diversity Competence in Counselor Education and Training Programs

a. Faculty Diversity. Counselor educators are committed to recruiting and retaining a diverse faculty.

b. Student Diversity. Counselor educators actively attempt to recruit and retain a diverse student body. Counselor educators demonstrate commitment to multicultural/diversity competence by recognizing and valuing diverse cultures and types of abilities students bring to the training experience. Counselor educators provide appropriate accommodations that enhance and support diverse student well-being and academic performance.

c. Multicultural/Diversity Competence. Counselor educators actively infuse multicultural/diversity competency in their training and supervision practices. They actively train students to gain awareness, knowledge, and skills in the competencies of multicultural practice. Counselor educators include case examples, role-plays, discussion questions, and other classroom activities that promote and represent various cultural perspectives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:626 (August 1989), amended LR 24:445 (March 1998), LR 29:149 (February 2003), LR 39:

§2115. Research and Publication

A. Counselors who conduct research are encouraged to contribute to the knowledge base of the profession and promote a clearer understanding of the conditions that lead to a healthy and more just society. Counselors support efforts of researchers by participating fully and willingly whenever possible. Counselors minimize bias and respect diversity in designing and implementing research programs.

1. Research Responsibilities

a. Use of Human Research Participants. Counselors plan, design, conduct, and report research in a manner that is consistent with pertinent ethical principles, federal and state laws, host institutional regulations, and scientific standards governing research with human research participants.

b. Deviation from Standard Practice. Counselors seek consultation and observe stringent safeguards to protect the rights of research participants when a research problem suggests a deviation from standard or acceptable practices.

c. Independent Researchers. When independent researchers do not have access to an institutional review board (IRB), they should consult with researchers who are familiar with IRB procedures to provide appropriate safeguards.

d. Precautions to Avoid Injury. Counselors who conduct research with human participants are responsible for the welfare of participants throughout the research process and should take reasonable precautions to avoid causing injurious psychological, emotional, physical, or social effects to participants.

e. Principal Researcher Responsibility. The ultimate responsibility for ethical research practice lies with the principal researcher. All others involved in the research activities share ethical obligations and responsibility for their own actions.

f. Minimal Interference. Counselors take reasonable precautions to avoid causing disruptions in the lives of research participants that could be caused by their involvement in research.

g. Multicultural/Diversity Considerations in Research. When appropriate to research goals, counselors are sensitive to incorporating research procedures that take into account cultural considerations. They seek consultation when appropriate.

2. Rights of Research Participants

a. Informed Consent in Research. Individuals have the right to consent to become research participants. In seeking consent, counselors use language that

i. accurately explains the purpose and procedures to be followed,

ii. identifies any procedures that are experimental or relatively untried,

iii. describes any attendant discomforts and risks,

iv. describes any benefits or changes in individuals or organizations that might be reasonably expected,

v. discloses appropriate alternative procedures that would be advantageous for participants,

vi. offers to answer any inquiries concerning the procedures,

vii. describes any limitations on confidentiality,

viii. describes the format and potential target audiences for the dissemination of research findings, and

ix. instructs participants that they are free to withdraw their consent and to discontinue participation in the project at any time without penalty.

b. Deception. Counselors do not conduct research involving deception unless alternative procedures are not feasible and the prospective value of the research justifies the deception. If such deception has the potential to cause physical or emotional harm to research participants, the research is not conducted, regardless of prospective value. When the methodological requirements of a study necessitate concealment or deception, the investigator explains the reasons for this action as soon as possible during the debriefing.

c. Student/Supervisee Participation. Researchers who involve students or supervisees in research make clear to them that the decision regarding whether or not to participate in research activities does not affect one's academic standing or supervisory relationship. Students or supervisees who choose not to participate in educational research are provided with an appropriate alternative to fulfill their academic or clinical requirements.

d. Client Participation. Counselors conducting research involving clients make clear in the informed consent process that clients are free to choose whether or not to participate in research activities. Counselors take necessary precautions to protect clients from adverse consequences of declining or withdrawing from participation.

e. Confidentiality of Information. Information obtained about research participants during the course of an investigation is confidential. When the possibility exists that others may obtain access to such information, ethical research practice requires that the possibility, together with the plans for protecting confidentiality, be explained to

participants as a part of the procedure for obtaining informed consent.

f. **Persons Not Capable of Giving Informed Consent.** When a person is not capable of giving informed consent, counselors provide an appropriate explanation to, obtain agreement for participation from, and obtain the appropriate consent of a legally authorized person.

g. **Commitments to Participants.** Counselors take reasonable measures to honor all commitments to research participants.

h. **Explanations after Data Collection.** After data are collected, counselors provide participants with full clarification of the nature of the study to remove any misconceptions participants might have regarding the research. Where scientific or human values justify delaying or withholding information, counselors take reasonable measures to avoid causing harm.

i. **Informing Sponsors.** Counselors inform sponsors, institutions, and publication channels regarding research procedures and outcomes. Counselors ensure that appropriate bodies and authorities are given pertinent information and acknowledgement.

j. **Disposal of Research Documents and Records.** Within a reasonable period of time following the completion of a research project or study, counselors take steps to destroy records or documents (audio, video, digital, and written) containing confidential data or information that identifies research participants. When records are of an artistic nature, researchers obtain participant consent with regard to handling of such records or documents.

3. **Relationships with Research Participants (When Research Involves Intensive or Extended Interactions)**

a. **Nonprofessional Relationships.** Nonprofessional relationships with research participants should be avoided.

b. **Relationships with Research Participants.** Sexual or romantic counselor–research participant interactions or relationships with current research participants are prohibited.

c. **Sexual Harassment and Research Participants.** Researchers do not condone or subject research participants to sexual harassment.

d. **Potentially Beneficial Interactions.** When a nonprofessional interaction between the researcher and the research participant may be potentially beneficial, the researcher must document, prior to the interaction (when feasible), the rationale for such an interaction, the potential benefit, and anticipated consequences for the research participant. Such interactions should be initiated with appropriate consent of the research participant. Where unintentional harm occurs to the research participant due to the nonprofessional interaction, the researcher must show evidence of an attempt to remedy such harm.

4. **Reporting Results**

a. **Accurate Results.** Counselors plan, conduct, and report research accurately. They provide thorough discussions of the limitations of their data and alternative hypotheses. Counselors do not engage in misleading or fraudulent research, distort data, misrepresent data, or deliberately bias their results. They explicitly mention all variables and conditions known to the investigator that may have affected the outcome of a study or the interpretation of

data. They describe the extent to which results are applicable for diverse populations.

b. **Obligation to Report Unfavorable Results.** Counselors report the results of any research of professional value. Results that reflect unfavorably on institutions, programs, services, prevailing opinions, or vested interests are not withheld.

c. **Reporting Errors.** If counselors discover significant errors in their published research, they take reasonable steps to correct such errors in a correction erratum, or through other appropriate publication means.

d. **Identity of Participants.** Counselors who supply data, aid in the research of another person, report research results, or make original data available take due care to disguise the identity of respective participants in the absence of specific authorization from the participants to do otherwise. In situations where participants self-identify their involvement in research studies, researchers take active steps to ensure that data are adapted/changed to protect the identity and welfare of all parties and that discussion of results does not cause harm to participants.

e. **Replication Studies.** Counselors are obligated to make available sufficient original research data to qualified professionals who may wish to replicate the study.

5. **Publication**

a. **Recognizing Contributions.** When conducting and reporting research, counselors are familiar with and give recognition to previous work on the topic, observe copyright laws, and give full credit to those to whom credit is due.

b. **Plagiarism.** Counselors do not plagiarize, that is, they do not present another person's work as their own work.

c. **Review/Republication of Data or Ideas.** Counselors fully acknowledge and make editorial reviewers aware of prior publication of ideas or data where such ideas or data are submitted for review or publication.

d. **Contributors.** Counselors give credit through joint authorship, acknowledgment, footnote statements, or other appropriate means to those who have contributed significantly to research or concept development in accordance with such contributions. The principal contributor is listed first and minor technical or professional contributions are acknowledged in notes or introductory statements.

e. **Agreement of Contributors.** Counselors who conduct joint research with colleagues or students/supervisees establish agreements in advance regarding allocation of tasks, publication credit, and types of acknowledgement that will be received.

f. **Student Research.** For articles that are substantially based on students' course papers, projects, dissertations or theses, and on which students have been the primary contributors, they are listed as principal authors.

g. **Duplicate Submission.** Counselors submit manuscripts for consideration to only one journal at a time. Manuscripts that are published in whole or in substantial part in another journal or published work are not submitted for publication without acknowledgment and permission from the previous publication.

h. **Professional Review.** Counselors who review material submitted for publication, research, or other scholarly purposes respect the confidentiality and proprietary rights of those who submitted it. Counselors use

care to make publication decisions based on valid and defensible standards. Counselors review article submissions in a timely manner and based on their scope and competency in research methodologies. Counselors who serve as reviewers at the request of editors or publishers make every effort to only review materials that are within their scope of competency and use care to avoid personal biases.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:626 (August 1989), amended LR 24:446 (March 1998), LR 29:150 (February 2003), LR 39:

§2117. Resolving Ethical Issues

A. Counselors behave in a legal, ethical, and moral manner in the conduct of their professional work. They are aware that client protection and trust in the profession depend on a high level of professional conduct. They hold other counselors to the same standards and are willing to take appropriate action to ensure that these standards are upheld. Counselors strive to resolve ethical dilemmas with direct and open communication among all parties involved and seek consultation with colleagues and supervisors when necessary. Counselors incorporate ethical practice into their daily professional work. They engage in ongoing professional development regarding current topics in ethical and legal issues in counseling.

1. Standards and the Law

a. Knowledge. Counselors understand the ACA Code of Conduct and other applicable ethics codes from other professional organizations or from certification and licensure bodies of which they are members. Lack of knowledge or misunderstanding of an ethical responsibility is not a defense against a charge of unethical conduct.

b. Conflicts between Ethics and Laws. If ethical responsibilities conflict with law, regulations, or other governing legal authority, counselors make known their commitment to the Code of Conduct and Standards of Practice and take steps to resolve the conflict. If the conflict cannot be resolved by such means, counselors may adhere to the requirements of law, regulations, or other governing legal authority.

2. Suspected Violations

a. Ethical Behavior Expected. Counselors expect colleagues to adhere to the Code of Conduct and Standards of Practice. When counselors possess knowledge that raises doubts as to whether another counselor is acting in an ethical manner, they take appropriate action.

b. Informal Resolution. When counselors have reason to believe that another counselor is violating or has violated an ethical standard, they attempt first to resolve the issue informally with the other counselor if feasible, provided such action does not violate confidentiality rights that may be involved.

c. Reporting Ethical Violations. If an apparent violation has substantially harmed, or is likely to substantially harm a person or organization and is not appropriate for informal resolution or is not resolved properly, counselors take further action appropriate to the situation. Such action might include referral to state or national committees on professional ethics, voluntary national certification bodies, state licensing boards, or to the appropriate institutional authorities. This standard does not

apply when an intervention would violate confidentiality rights or when counselors have been retained to review the work of another counselor whose professional conduct is in question.

d. Consultation. When uncertain as to whether a particular situation or course of action may be in violation of the Code of Conduct, counselors consult with other counselors who are knowledgeable about ethics and the Code of Conduct, with colleagues, or with appropriate authorities

e. Organizational Conflicts. If the demands of an organization with which counselors are affiliated pose a conflict with the Code of Conduct, counselors specify the nature of such conflicts and express to their supervisors or other responsible officials their commitment to the Code of Conduct. When possible, counselors work toward change within the organization to allow full adherence to the Code of Conduct. Ethics. In doing so, they address any confidentiality issues.

f. Unwarranted Complaints. Counselors do not initiate, participate in, or encourage the filing of ethics complaints that are made with reckless disregard or willful ignorance of facts that would disprove the allegation.

g. Unfair Discrimination Against Complainants and Respondents. Counselors do not deny persons employment, advancement, admission to academic or other programs, tenure, or promotion based solely upon their having made or their being the subject of an ethics complaint. This does not preclude taking action based upon the outcome of such proceedings or considering other appropriate information.

3. Cooperation With Ethics Committees.

a. Counselors assist in the process of enforcing the Code of Conduct. Counselors cooperate with investigations, proceedings, and requirements of the LPC Board Disciplinary Committee. Counselors are familiar with the LPC Board Code of Conduct and Professional and Occupational Standards and procedures for processing complaints of ethical violations as it pertains to the enforcement of the Code of Conduct and Standards of Practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:626 (August 1989), amended LR 24:447 (March 1998), LR 29:151 (February 2003), LR 39:

§2118. Appendix—Declaration of Practices and Procedures for Licensed Professional Counselors

A. ...

1. Licensed professional counselor/counselor intern's name, mailing address, and telephone number.

2. - 3.b....

4. Areas of Focus

a. List your areas of focus such as career counseling, marriage and family counseling, adolescents, etc.

4.b. - 12. ...

13. It is also required that a place be provided for the date and signatures of the counselor/counselor intern, the client(s), and, if warranted, the date and signatures of the parent/guardian and the counselor intern's supervisor. A general statement is required indicating that the client has read, understands, and agrees to the conditions set forth by

the declaration statement. Minor clients must have an accompanying parent/guardian signature which provides consent for their treatment.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:627 (August 1989), amended LR 20:544 (May 1994), LR 29:152 (February 2003), LR 39:

Subpart 2. Professional Standards for Licensed Marriage and Family Therapists

Chapter 33. Requirements for Licensure

§3313. Examination Requirements

A. - C. ...

D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:158 (February 2003), amended LR 35:1114 (June 2009), LR 39:

§3315. Requirements for the Registration and Supervision of MFT Interns

A. - C. ...

1. A MFT intern must complete an internship under the supervision of a board-approved supervisor or registered supervisor candidate that consists of qualified post-graduate work experience in marriage and family therapy and that includes at least 3,000 hours of clinical services to individuals, couples, families, or groups. An out of state applicant may transfer up to 2500 hours of supervised experience towards licensure (a maximum of 1600 direct client contact hours, a maximum of 815 indirect hours, and a maximum of 85 hours of face- to-face supervision). The aforementioned hours must have been accrued under the clinical supervision of an approved supervisor within their state who meets the qualifications of a supervisor of MFT interns set forth by the advisory committee. The decision to approve transfer of hours and supervisors from out of state shall be made at the discretion of the advisory committee.

a. - b. ...

c. The intern shall complete his or her internship in not less than two and no more than seven years from the date the intern is registered with the board. All documents for licensure must be submitted before the end of the seven year period. Failure to submit all documents for licensure by the end of the seven year period will result in forfeiture of all previously accrued direct, indirect, and face to face supervision hours, and the applicant must reapply under the current rules. A request for extension may be made to the advisory committee in writing no later than 60 days prior to the end of the seven year period. The advisory committee will review such requests to determine if an exception is warranted.

C.1.d. - D.4.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:158 (February 2003), amended LR 29:2787 (December 2003), LR 35:1114 (June 2009), LR 38:1966 (August 2012), LR 39:

Chapter 37. Reciprocity and Provisional Licenses Endorsement and Expedited Processing

§3701. Endorsement

A. Upon recommendation of the board and marriage and family therapy advisory committee, the board shall issue a license to any person who has been licensed as a marriage and family therapist and has actively practiced marriage and family therapy for at least five years in another jurisdiction. The applicant must submit an application on forms prescribed by the board in the prescribed manner and pay the required licensure fee. Applicants must also have passed the Association of Marital and Family Therapy Regulatory Board's examination in Marital and Family Therapy. An applicant must submit documentation of at least 40 CEHs, in accordance with the requirements listed in Chapter 33, within two years of the date of application for licensure endorsement in Louisiana. An applicant must also be in good standing in all jurisdictions in which they are licensed and must not have been disciplined in any jurisdiction for an act that would have constituted grounds for refusal, suspension, or revocation of a license to practice marriage and family therapy in the state of Louisiana at the time the act was committed.

B. Upon recommendation of the board and marriage and family therapy advisory committee, the board shall issue a license to any person licensed as a licensed as a marriage and family therapist for less than five years in another jurisdiction whose requirements for the license are substantially equivalent to or exceed the requirements of the state of Louisiana. The applicant must submit an application on forms prescribed by the board in the prescribed manner and pay the required licensure fee. Applicants must also provide proof of having passed the Association of Marital and Family Therapy Regulatory Board's examination in Marital and Family Therapy. An applicant must also be in good standing in all jurisdictions in which they are licensed and must not have been disciplined in any jurisdiction for an act that would have constituted grounds for refusal, suspension, or revocation of a license to practice marriage and family therapy in the state of Louisiana at the time the act was committed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 39:

§3703. Expedited Processing

A. The board does not issue temporary practice permits; however, expedited application processing is available. The applicant must submit the completed application (i.e. for licensure, registration, etc.), expedited processing application, and the required fee. Upon receipt of the aforementioned items, the applicant will receive a response from a board staff member within five business days informing the applicant of the status of their application. If the application materials submitted do not contain all of the necessary documents to complete the application, the application will be reviewed on the following application review date and the expedited processing application fee will not be refunded.

B. All applicants whom board staff determines should be denied or reviewed by the board must be presented to the

board at the next regularly scheduled board meeting. Therefore, a verdict of denial may not be achieved within five business days of receipt of all application materials for expedited processing. Those applicants whom board staff determines should be approved will receive notification of approval within five business days.

C. Military personnel (active duty and veterans honorably discharged within five years of the application date) and their spouses who are appropriately licensed in another jurisdiction will receive a status update from the board within 30 days pertaining to approval or denial of the application. Such applicants must provide proof of military status via DD Form 214 as part of the completed application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 39:

Family Impact Statement

As required by Act 1138 of the 1999 Regular Session of the Louisiana Legislature, the following Family Impact Statement is submitted to be published with the Notice of Intent in the *Louisiana Register*. A copy of this statement will also be provided to the respective legislative oversight committees.

1. The effect on the stability of the family. Implementation of this proposed Rule will have no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. Implementation of this proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect in the functioning of the family. Implementation of this proposed Rule will have no effect on the functioning of the family.

4. The effect on family earnings and family budget. Implementation of this proposed Rule will have little or no effect on family earnings and family budget. Affected privileged LPCs (if both a LPC-S and LPC with appraisal privileges) will have a minimal (\$100.00 every 2 years) impact on their operational costs.

5. The effect on the behavior and personal responsibility of children. Implementation of this proposed Rule will have no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed Rule. Implementation of this proposed Rule will have no effect on the ability of the family or a local government to perform this function.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small

businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

Interested persons may submit written comments on these rules to Mary Alice Olsan, Executive Director, Licensed Professional Counselors Board of Examiners, 8631 Summa Avenue, Suite A, Baton Rouge, LA 70808 until 10 a.m. on May 24th, 2013.

Mary Alice Olsan
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: LPC Practice and Code of Conduct

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be an estimated one-time implementation cost to the Board of \$2,500 in FY 13. The cost will be absorbed within the budget of the Louisiana Licensed Professional Counselors (LPC) Board. There will be no other impact on any state or local governmental agency.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed revisions to the rules are needed primarily for clarification of current practices and definitions and to be in compliance with Act 276 (relative to licensure of military and spouses) and Act 636 (amends definitions relative to Mental Health Counselors Licensing Act) of the 2012 Regular Legislative Session. In addition, the board proposes to repeal its current Code of Conduct and implement a new one with multiple changes in compliance with the American Counseling Association (ACA) Code of Ethics. However, there are no penalty fine or fee changes associated with the Code of Conduct revisions; therefore, the Board does not anticipate any additional revenue as a result of this rule change.

Beginning in FY 14, the board projects to receive additional revenues of approximately \$22,250 every year from a new \$50 renewal fee imposed on Licensed Professional Counselors (LPC) who hold either supervisor or appraisal privileges. Renewal will take place every 2 years. The LPC Board estimates that there are 890 potential LPCs subject to this new renewal fee, and approximately half will renew in FY 14 and half will renew in FY 15, which will generate approximately \$22,250 annually (445 x \$50 privilege renewal fee).

In addition, the rule changes to section 503 codify current practice that any counselor/therapist serving Louisiana residents over the Internet must be licensed in Louisiana. The license application fee is \$200 and renewal fee is \$150.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

LPC Supervisors of Counselor Interns (LPC-S) and those LPCs with the appraisal privilege will incur a \$50 privilege renewal fee every two (2) years. Additionally, a LPC must now accrue and submit, if audited, proof of three (3) clock hours in ethics and six (6) clock hours in diagnosis as subsets of their current forty (40) hour Continued Education Hours (CEHs) requirement every 2 years. A LPC-S must also accrue and submit, if audited, proof of three (3) clock hours of continuing education in supervision as a subset of their current

forty (40) hour CEH requirement every 2 years. Since these are not additional CEHs, but are merely more defined subsets of the current 40-hour CEH requirement, there are no additional anticipated costs to the LPC-Supervisors or LPCs. In addition, beginning in 2014, up to 20 of the 40 CEHs can be obtained online, thereby saving LPCs travel and associated costs.

In addition, LPC-S's may charge Counselor Interns for each hour of face-to-face supervision. Though the board does not regulate these fees, on average an LPC-S will charge between \$50 and \$90 for every hour supervised. As such, depending upon the Supervisor's rate, this could result in estimated \$5,000 to \$9,000 in additional income for the LPC-S for each Counselor Intern (100 hours x \$50-\$90). A Supervisor may have up to ten (10) Interns at one time. All Counselor Interns are required to complete at least 100 hours of face-to-face supervision with their Board-approved LPC-S as a requirement for licensure.

In addition, the rule changes to section 503 codify current practice that any counselor/therapist serving Louisiana residents over the Internet must be licensed in Louisiana. The license application fee is \$200 and renewal fee is \$150.

The Board seeks to codify current practice, which requires applicants for licensure through endorsement that have been licensed in another state and actively practicing for over 5 years to either pass the National Counselor Examination, the National Clinical Mental Health Counseling Examination, or successfully complete the Board administered oral examination. For those who have been practicing less than 5 years, passage of one of the national exams is required as opposed to the board administered oral exam. These applicants are subject to the various examination fees required by the national testing agencies.

Under section 1505, client records for adults must be maintained up to 5 years and up to 7 years for minors. This may result in additional costs for storage for some licensees, though the Board anticipates this number to be minimal since a survey of current licensees showed that most already keep records for 5 to 7 years. Costs will vary according to each licensee's business, scope of work, and current accommodations for filing.

Since it is not explicitly mentioned in the ACA Code of Ethics, the ban on LPCs receiving referral fees is eliminated from section 2109. However, since the Board intends to reinstate the ban on referrals fees through the rulemaking process, there is no anticipated increase in revenues to LPCs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule change should not affect competition or employment. An LPC-S with the appraisal privilege may find more job opportunities as they may provide additional services to their employer.

Mary Alice Olsan
Executive Director
1304#051

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Nursing

Advance Practice Registered Nurses
(LAC 46:XLVII.4503, 4505, 4507, 4511, 4513, and 4517)

In accordance with R.S. 37.911 et seq., authorizes the Louisiana State Board of Nursing to regulate individuals with the desire to practice as a registered nurse or advanced practice registered nurse and to adopt the rules and

regulations to implement the provisions of the Nurse Practice Act. The proposed rule would allow for alignment with the nationally proposed uniform requirements for advanced practice registered nurses. This model is aimed at public protection by ensuring uniformity across all jurisdictions. Uniformity of national standards and regulation not only allows for the mobility of nurses, it also served the public by increasing access to care. The need for standardization also affects the livelihood of practicing APRN's and their ability to relocate to areas experiencing health care shortages. The proposed changes provide for consistent definitions regarding advanced practice registered nursing which specify role and population focus. The proposed rules eliminates issuance of a temporary permit to practice as a advanced practice registered nurse for the new graduate and assures that authorization to practice depends on achieving certification. The proposed revisions streamline the requirements for submitting changes in collaborative practice agreements. The proposed rules clarify the actions the regulatory agency may take if the licensee does not meet requirements for licensure or if the licensee must demonstrate further competency to ensure public safety; modification of the licensure/ credentialing processes to require evidence of completed education and board certification prior to licensure, requirement for continued certification requirement and authorization of prescriptive authority which allows for thorough validation of core competencies.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLVII. Nurses: Practical Nurses and Registered Nurses

Subpart 2. Registered Nurses

Chapter 45. Advanced Practice Registered Nurses

§4503. Titles

A. Advanced practice registered nurse (APRN) means a licensed registered nurse who has completed an accredited graduate level education program preparing the individual in one or more APRN role and population foci, is certified by a nationally recognized certifying body in one or more role and population focus and who meets the criteria for an advanced practice registered nurse as established by the board.

B. A nurse licensed as an advanced practice registered nurse (APRN) shall include, but not be limited to, the following functional roles.

1. *Certified Nurse Midwife (CNM)*—an advanced practice registered nurse educated in the disciplines of nursing and midwifery and certified according to a nationally recognized certifying body, such as the American College of Nurse Midwives Certification Council, as approved by the board and who is authorized to manage the nurse midwifery care of newborns and women in the antepartum, intrapartum, and postpartum periods as well as primary care for women across their lifespan and treatment of their male partners for sexually transmitted infections (STI).

2. *Certified Registered Nurse Anesthetist (CRNA)*—an advanced practice registered nurse educated in the field of nurse anesthesia and certified according to the requirements of a nationally recognized certifying body as approved by

the board and who is authorized to select and administer anesthetics or ancillary services to patients under their care.

3. *Clinical Nurse Specialist (CNS)*—an advanced practice registered nurse educated as a CNS and is certified according to the requirements of a nationally recognized certifying body as approved by the board. CNS's are expert clinicians in a specialized area of nursing practice and population focus and practice in a wide variety of health care settings by providing direct patient care and influencing health care outcomes by providing expert consultation and by implementing improvements in health care delivery systems. CNS practice integrates nursing practice which focuses on assisting patients in the prevention or resolution of illness through medical diagnosis and treatment of disease, injury or disability.

4. *Certified Nurse Practitioner (CNP)*—an advanced practice registered nurse educated in a specified area of care and certified according to the requirements of a nationally recognized certifying body as approved by the board and who is authorized to provide primary, acute, or chronic care as an advanced nurse practitioner acting within his scope of practice to individuals, families, and other populations in a variety of settings including, but not limited to, homes, institutions, offices, industry, schools, and other community agencies.

5. Repealed.

C. A licensed advanced practice registered nurse must use the title "APRN". The APRN role of certification and/or education designation may be used before or after APRN as follows:

1. certification:
 - a. CNM—certified nurse midwife;
 - b. CRNA—certified registered nurse anesthetist;
 - c. CNS—clinical nurse specialist;
 - d. CNP—certified nurse practitioner;
2. education:
 - a. MSN, MN, MS or other appropriate degree at the master's level;
 - b. DNP, DNS, EdD, PhD, or other appropriate degree at the doctorate level.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 22:281 (April 1996), amended LR 27:723 (May 2001), LR 31:2012 (August 2005), LR 39:

§4505. Definitions

Accrediting Agency—an organization which establishes and maintains standards for professional nursing or nursing related programs and recognizes those programs that meet these standards.

* * *

Advanced Practice Nursing Education Program—a program whose purpose is to prepare advanced practitioners of nursing with a graduate degree or post-graduate certification/award by an academic institution accredited or awarded pre-approval, pre-accreditation status by a nursing or nursing –related accrediting organization recognized by the US Department of Education (USDE) and/or the Council for Higher Education Accreditation (CHEA) and whose graduates are eligible for certification as an Advanced Practice Registered Nurse.

Advanced Practice Registered Nurse (APRN)—a registered nurse:

1. who has completed an accredited graduate-level education program preparing him/her for one of the four recognized APRN roles in addition to a population focus;
2. who has passed a national certification examination that measures APRN role and population-focused competencies and who maintains continued competence as evidenced by recertification in the role and population through the national certification program;
3. who has acquired advanced clinical knowledge and skills preparing him/her to provide direct care to patients;
4. whose practice builds on the competencies of registered nurses (RNs) by demonstrating a greater depth and breadth of knowledge, a greater synthesis of data, increased complexity of skills and interventions, and greater role autonomy;
5. who is educationally prepared to assume responsibility and accountability for health promotion and/or maintenance as well as the assessment, diagnosis, and management of patient problems, which includes the use and prescription of pharmacologic and non-pharmacologic interventions;
6. who has clinical experience of sufficient depth and breadth to reflect the intended license;
7. who has obtained a license to practice as an APRN;
8. who is expected to practice within established standards and is accountable for the quality of advanced nursing care rendered, for recognizing limits of knowledge and experience, planning for the management of situations beyond one's expertise; and for consulting with or referring patients to other health care providers as appropriate.

Advanced Practice Registered Nurse Student—any licensed registered nurse enrolled as a student in an educational program approved by the board which prepares the individual for APRN licensure.

Advanced Practice Registered Nursing—nursing by a certified registered nurse anesthetist, certified nurse midwife, clinical nurse specialist, or nurse practitioner which is based on knowledge and skills acquired in a basic nursing education program, licensure as a registered nurse, and a minimum of a graduate degree with a concentration in one or more respective advanced practice nursing role and population focus which includes both didactic and clinical components, advanced knowledge in nursing theory, physical and psychosocial assessment, nursing interventions, and management of health care.

Advanced Practice Registered Nursing Role—a designated area of advanced practice in which the registered nurse holds a graduate degree with a concentration in the respective area of practice that includes both the didactic and clinical components, advanced knowledge in nursing theory, physical and psychosocial assessment, nursing interventions, pharmacotherapeutics, and management of health care and also prepares the APRN for national certification. For the purpose of this part, the *area of practice* is defined within the context of the role and population focus of advanced practice nursing. The four APRN roles include: certified registered nurse anesthetist, certified nurse midwife, clinical nurse specialist, and nurse practitioner.

Approval—a status indicating the program has met the legal standards established by the board.

Approved Program—a nursing education program approved by the board.

Assessment Studies—diagnostic studies including, but not limited to laboratory testing, radiologic studies, electrocardiograms, pulmonary function tests, and pharmaceutical diagnostic testing.

Board—the Louisiana State Board of Nursing.

Clinical Practice Guidelines—refers to written or electronic documents, jointly agreed upon by the collaborating professionals that describe a specific plan, arrangement, or sequence of orders, steps, or procedures to be followed or carried out in providing patient care in various clinical situations. These may include textbooks, reference manuals, electronic communications, and Internet sources. Clinical practice guidelines must be commensurate with the APRN's knowledge, skills and abilities; in accordance with current standards of care and evidence-based practice for the APRN role and population focus; address types or categories or schedules of drugs for prescription; be specific to the practice setting; and be maintained on site.

Collaborative Practice Agreement—a formal written statement/document addressing the parameters of the collaborative practice which are mutually agreed upon by the advanced practice registered nurse and one or more licensed physicians or dentists which shall include but not be limited to the following provisions:

1. - 3. ...

Contact Hour—a unit of measurement that describes 60 minutes of participation in an educational activity, which meets the board's continuing education criteria. Ten contact hours equal one continuing education unit (C.E.U.).

National Nursing Accrediting Body—the National League for Nursing Accreditation Commission (NLNAC), the Commission for Collegiate Nursing Education (CCNE), Accreditation Commission for Midwifery Education (ACME), or the Council on Accreditation of Nurse Anesthesia Educational Programs (COA)

Nationally Recognized Certifying Body—a national certification organization which certifies qualified licensed registered nurses as advanced practice registered nurses and which establishes and requires certain eligibility criteria related to education and practice, offers an examination in an advanced practice nursing role and population which meets current psychometric guidelines and tests, and is approved by the board.

Population Focus—term referenced in the National Counsel for State Boards of Nursing's document entitled "Consensus Model for APRN Regulation: Licensure Accreditation, Certification, & Education" which refers to one of the areas of concentrated study and practice provided to a collection of specified individuals who have characteristics in common. A broad, population-based focus of study encompasses common problems and aspects of that group of patients and the likely co-morbidities, interventions, and responses to those problems. Examples include, but are not limited to neonatal, pediatric, women's health, adult, family, mental health, etc. A population focus

is not defined as a specific disease/health problem or specific intervention.

Prescription Monitoring Program (PMP)—a system for the monitoring of controlled substances and other drugs of concern dispensed in the state or dispensed to an address within the state as established in R.S. 40:1001-1014.

Published Professional Standards—level of performance that advanced practice registered nurses, within their specific role and population focus, are required to achieve and maintain in their practice; represents the criteria against which the performance of all advanced practice registered nurses within the role and population focus is considered as published by the relevant professional nursing organizations.

Role—the advanced practice area for which a graduate level nursing program prepares its graduates. The four roles for advanced practice registered nurse licensure include nurse midwives, nurse anesthetists, clinical nurse specialists, and nurse practitioners.

Specialty—a focus of practice beyond an advanced practice role and population focus assuring expert, in depth knowledge, skills, and abilities of an aspect of patient care; e.g., cardiovascular disease, palliative care, oncology, substance abuse, orthopedics, critical care, etc.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 27:724 (May 2001), amended LR 31:2013 (August 2005), LR 39:

§4507. Licensure as Advanced Practice Registered Nurse

A. - A.1.a. ...

b. completion of a minimum of a graduate degree with a concentration in the respective advanced practice nursing role and population focus or completion of a post master's concentration in the respective advanced practice nursing role and population focus from a program accredited by a nursing or nursing related accrediting body that is recognized by the U.S. Secretary of Education and/or the Council for Higher Education Accreditation (CHEA) and otherwise approved by the board.. Exception to the graduate degree may be granted to those applicants who provide documentation as requested by the board that, prior to December 31, 1995, the applicant completed or was continuously enrolled in a formalized post-basic education program preparing for the advanced practice nursing role and population focus as approved by the board prior to December 31, 1995 as follows:

i. a program of studies offered through an institution of higher education which qualifies the graduate to take a certification examination in the advanced practice role and population foci; or

ii. a program of studies accepted by a nationally recognized certifying body which is recognized by the Louisiana State Board of Nursing.

iii. Repealed

c. ...

d. submission of evidence of current certification in the respective advanced practice nursing role and population

focus by a nationally recognized certifying body approved by the board.

e. ...

f. submission to criminal history record information as specified in LAC46:XLVII.3330;

g. after initial licensure, applicants seeking licensure for advanced practice in an additional specialty and/or functional role shall meet the requirements stated in LAC 46:XLVII.4507.A.1.a-d.

h. if there is a gap equal to or greater than two years between the completion of the graduate or post graduate program as delineated in LAC46:XLVII. 4507.1.b and the application for initial licensure, the applicant must provide additional verification of competency as requested by the board and may be required to appear before the board (or its committee) for further consideration before licensure or a temporary permit may be granted.

2. The board will verify all licensure and certification requirements via primary source verification as requested including (a) Licensure (b) Education (c) Certification and information relevant to the practice of the APRN.

3. An APRN license shall be issued with an expiration date that coincides with the applicant's RN license.

B. Temporary Permit—Initial Applicants

1. An APRN applicant that has a gap equal to or greater than two years between the completion of the graduate or post graduate program as delineated in LAC46:XLVII. 4507.1.b and the application for initial licensure, may be granted a temporary permit for a maximum of 120 days which allows the applicant to practice under the guidance of an APRN or physician who is engaged in active clinical practice and holds an active, unencumbered, unrestricted licensed within the role and population or practice specialty of the applicant. Evidence must be submitted to the board delineating that the applicant:

a. holds an active, unencumbered, unrestricted and valid registered nurse license in Louisiana;

b. is in the process of applying for initial licensure under LAC 46:XLVII.4507.A;

c. holds current certification in the respective advanced practice nursing role and population focus by a nationally recognized certifying body approved by the board;

d. meets requirements of LAC 46:XLVII.4507.A.1.h. and;

e. there are no grounds for disciplinary proceedings as stated in R.S. 37:921.

2. A nurse practicing under the temporary permit shall use the title advanced practice registered nurse applicant or APRN applicant.

3. The APRN temporary permit may be extended for justifiable causes.

4. If allegations of acts or omissions which constitute grounds for disciplinary action as defined in R.S. 37:911 et seq., or any rule promulgated by the board is received during the permit interval, the temporary permit issued pursuant to this Section above shall be recalled and licensure denied or delayed in accordance with LAC 46:XLVII.3331 or until such time as the person completes the disciplinary process.

C. ...

1. If the applicant is applying from another jurisdiction that licenses the role and population focus of the

APRN for which the applicant is seeking licensure, the applicant shall submit:

a. - c. ...

d. verification of licensure status directly from the jurisdiction of original licensure in the advanced practice nursing role and population focus;

e. verification of current unencumbered, unrestricted license in the registered nurse and advanced practice nursing role and population focus directly from the jurisdiction of current or most recent employment as an APRN;

f. verification of educational requirements as stated in LAC 46:XLVII.4507.A.1.b;

g. verification of current unconditional national certification in the respective role and population focus as recognized by the board; and

h. submission to criminal history record information as specified in LAC46:XLVII.3330.

2. If the applicant is applying from a jurisdiction that does not license the APRN role and/or population focus for which the applicant is seeking licensure, the applicant shall submit in addition to Subparagraphs C.1.a, b, c, f, g, and h as stated above:

a. documentation of the applicant's qualifications for advanced practice directly from the board in the state where the applicant first practiced in the APRN role and/or population focus; and

b. documentation of the applicant's qualifications for advanced practice directly from the board in the state where the applicant was last employed in the APRN role and/or population focus.

3. If the applicant is applying from a jurisdiction that does not verify advanced practice or does not meet the endorsement requirements, the applicant shall qualify by meeting the requirements for initial APRN licensure, LAC 46:XLVII.4507.A and B.

4. if the applicant has not been engaged in clinical practice as an APRN for two years or more, the applicant must provide additional verification of competency as requested by the board and may be required to appear before the board (or its committee) for further consideration before licensure or a temporary permit may be granted.

D. Temporary Permit: Endorsement Applicants

1. - 1.c. ...

d. Repealed.

2. The APRN temporary permit may be extended for justifiable causes.

3. If allegations of acts or omissions which constitute grounds for disciplinary action as defined in R.S. 37:911 et seq., or any rule promulgated by the board is received during the permit interval, the temporary permit issued pursuant to this Section above shall be recalled and licensure denied or delayed in accordance with LAC 46:XLVII.3331 or until such time as the person completes the disciplinary process.

E. Renewal of Licenses by Certification or Commensurate Requirements

1. The date for renewal of licensure to practice as an APRN shall coincide with renewal of the applicant's RN license. Renewal of the APRN license is contingent upon renewal of the RN license and verification that there are no grounds for disciplinary proceedings as stated in R.S. 37:921. RN and APRN license renewal must be submitted to

the board electronically through the board website annually prior to current licensure expiration. Renewal includes but is not limited to the following components:

a. completion of renewal applications for both RN and APRN licensure available at the board website during annual renewal season;

b. evidence of current certification/recertification in each APRN role and population focus being renewed by a national certifying body approved by the board;

c. payment of the annual licensure renewal fee as specified in LAC 46:XLVII.3341.

2. APRNs initially licensed in accordance with R.S. 37:912(B)(3)(4) (grand-fathered) and who are not advanced practice certified, or R.S. 37:920(A)(2) whose role and population focus does not provide for certification/recertification (commensurate requirements) shall submit the following documentation for renewal, in addition to meeting the requirements specified above in §4507.E.1.a-c:

a. - d. ...

e. Repealed

3. An advanced practice registered nurse shall maintain current national certification and/or recertification as required in all subsections regarding licensure throughout the entire licensure period. Failure of any APRN to submit evidence of and maintain current active certification or recertification shall result in the APRN license becoming inactive and invalid and the APRN shall not practice or use the title of advanced practice registered nurse until the requirements for reinstatement of the APRN license are met.

4. Any advanced practice registered nurse who practices during the time the APRN license is inactive and invalid will be subject to disciplinary action and will not be reinstated until such time as the person completes the disciplinary process.

F. Reinstatement of an APRN License

1. - 1.c. ...

d. APRNs initially licensed in accordance with R.S. 37:912(B)(3)(4) or 920(A)(2) whose role and population focus does not provide for certification/recertification shall submit the following documentation for each year of inactive or lapsed status:

1.d.i. - 2.a. ...

b. practice under the temporary permit and current practice standards set forth by the respective advanced practice nursing role and population focus; and

c. - d. ...

e. if seeking commensurate requirements the applicant must practice under the guidance of a clinical preceptor approved by the board for a minimum of 800 hours of clinical practice in the area of clinical specialization when certification is not available; and

f. - g. ...

3. If allegations of acts or omissions which constitute grounds for disciplinary action as defined in R.S. 37:911 et seq., or any rule promulgated by the board is received during the permit interval, the temporary permit issued pursuant to this Section above shall be recalled and licensure denied or delayed in accordance with LAC 46:XLVII.3331 or until such time as the person completes the disciplinary process.

4. if the applicant has not been in clinical practice as an APRN for two years or more, the applicant must provide additional verification of competency as requested by the

board and may be required to appear before the board (or its committee) for further consideration before licensure or a temporary permit may be granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 22:281 (April 1996), amended LR 27:724 (May 2001), LR 29:580 (April 2003), LR 31:1340 (June 2005), LR 31:2015 (August 2005), LR 32:247 (February 2006), LR 37:3027 (October 2011), LR 39:

§4511. Advanced Practice Registered Nurse Professional Certification Programs

A. A national certifying body which meets the following criteria shall be recognized by the board as mandated by R.S. 37:913:

1. - 3. ...

4. requires a graduate degree as the minimal educational level for certification or otherwise approved by the board;

5. utilizes an application process and credential review which includes documentation that the applicant's didactic education has concentrated in the advanced nursing practice role and population focus being certified, and that the applicant's clinical practice is in the advanced nursing role and population focus of certification;

6. - 9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 22:283 April 1996), amended LR 31:2023 (August 2005), LR 39:

§4513. Authorized Practice

A. - C.8. ...

D. Prescriptive and Distributing Authority. An advanced practice registered nurse (APRN) shall practice in a manner consistent with the definition of advanced practice set forth in R.S. 37:913(3). An APRN may be granted prescriptive authority to prescribe assessment studies, including pharmaceutical diagnostic testing (e.g., dobutamine stress testing) legend and certain controlled drugs, therapeutic regimens, medical devices and appliances, receiving and distributing a therapeutic regimen of prepackaged drugs prepared and labeled by a licensed pharmacist, and free samples supplied by a drug manufacturer, and distributing drugs for administration to and use by other individuals within the scope of practice as defined by the board in R.S. 37.913(3)(b).

1. The applicant shall:

a. hold a current, unencumbered, unrestricted and valid registered nurse license in Louisiana with no pending disciplinary proceedings as stated in R.S. 37:921;

b. hold a current, unencumbered, unrestricted and valid APRN license;

c. hold current national certification in the advanced practice nursing role and population focus by a nationally recognized certifying body approved by the board;

d. submit a notarized application on a form provided by the board with a non-refundable fee as set forth in LAC 46:XLVII.3341;

e. provide evidence of:

i. 500 hours of clinical practice as a licensed APRN or APRN applicant within two years in the role and population focus for which the applicant was educationally

prepared as an APRN immediately prior to applying for prescriptive and distributing authority; practice in another state as a licensed APRN may be accepted to meet this requirement; clinical practice obtained during the graduate program which meets requirements of eligibility for certification and which prepared the APRN or APRN applicant for the advanced practice nursing role may be accepted to meet this requirement;

ii. successful completion of a minimum of 45 contact hours of education (3 credit hour academic course) in advanced pharmacotherapeutics obtained as a component of a formal educational program preparing registered nurses for advanced practice, approved by the board;

iii. successful completion of a minimum of 45 contact hours (3 credit hour academic course) in advanced physiology/pathophysiology in a formal educational program approved by the board for preparation for advanced practice registered nurses;

iv. successful completion of a minimum of 45 contact hours (3 credit hour academic course) in advanced health assessment in a formal educational program approved by the board for preparation for advanced practice registered nurses; or

v. any deviation from Clause 1.e.i, ii, iii, or iv shall be submitted to the board for review and approval; and

vi. a collaborative practice agreement as defined in §4513.B.1, 2 and 3, with one or more licensed collaborating physicians which shall include, but not be limited to:

(a). a plan of accountability among the parties that:

(i). defines the prescriptive authority of the APRN and the responsibilities of the collaborating physician or physicians;

(ii). delineates a plan for hospital and other healthcare institution admissions and privileges which includes a statement that the collaborating physician must have said privileges at the same institution before an APRN can receive this determination at said institution;

(iii). delineates mechanisms and arrangements for diagnostic and laboratory requests for testing; and

(iv). delineates a plan for documentation of medical records;

(b). clinical practice guidelines as required by R.S. 37:913(9)(b) shall contain documentation of the types or categories or schedules of drugs available and generic substitution for prescription and be in accordance with current standards of care and evidence-based practice for the APRN specialty and functional role and be:

(i). mutually agreed upon by the APRN and collaborating physician;

(ii). specific to the practice setting;

(iii). maintained on site; and

(iv). reviewed and signed at least annually by the APRN and physician to reflect current practice;

(c). documentation of the availability of the collaborating physician when the physician is not physically present in the practice setting. Physicians shall be available to provide consultation as needed:

(i). physician shall be available by telephone or direct telecommunications for consultation,

assistance with medical emergencies, or patient referral, as delineated in the collaborative practice agreement; and

(ii). the secondary (back-up) physician or physicians shall be in good standing and approved by the Louisiana State Board of Medical Examiners and sign the collaborative practice agreement;

(iii). in the event the collaborating physician and any secondary (back-up) collaborating physician(s) are unavailable, the APRN will not prescribe;

(d). documentation shall be shown that patients are informed about how to access care when both the APRN and/or the collaborating physicians are absent from the practice setting; and

(e). an acknowledgement of the mutual obligation and responsibility of the APRN and collaborating physician to insure that all acts of prescriptive authority are properly documented.

2. Prescriptive Authority

a. Prescribing Controlled Substances and Legend Drugs

i. The LSBN shall review the application, reapplication or renewal, the collaborative practice agreement for prescriptive authority and all related materials and shall approve, modify, or deny the application, reapplication or renewal for prescriptive authority. An APRN with prescriptive authority approved by the board may prescribe drugs and therapeutic devices as recommended by clinical practice guidelines and the parameters of the collaborative practice agreement.

ii. Prior to granting an APRN prescriptive authority the collaborating physician or physicians license(s) shall be verified through the Louisiana State Board of Medical Examiners.

iii. An APRN granted prescriptive authority shall comply with all federal and state laws and rules in prescribing, distributing, and administering drugs.

iv. The APRN who has been given proper authority to prescribe whether in person or by an electronic means or over the Internet or over telephone lines must meet the following requirements:

(a). perform and appropriately document a history and physical examination, and make a diagnosis based upon the examination and all diagnostic and laboratory tests;

(b). formulate a therapeutic plan that is discussed with the patient;

(c). state the availability of the APRN or coverage for the patient for follow-up care;

(d). all of the above must be included in the collaborative practice agreement.

v. Each order for a prescription, whether written, faxed, oral, or electronic shall include the information in accordance with the rules and regulations as set forth by the Louisiana Board of Pharmacy including LAC 46:LIII.2511.

(a) - (e).iii). Repealed

b. Controlled Substances. The board may authorize an APRN with prescriptive authority to prescribe or distribute controlled substances as defined, enumerated or included in federal or state statutes or regulations 21 C.F.R.1308.11-15, R.S 40:964, on an individual practice basis An APRN who is so authorized shall provide their Drug Enforcement Administration registration number on all

written, electronic, or faxed prescriptions and be furnished on all oral prescriptions and shall comply with all scheduled drug prescription requirements in accordance with LAC 46:LIII.2511:

i. an APRN granted authority to prescribe or distribute controlled substances shall not utilize such substances in connection with the treatment of:

(a) - (c). ...

ii. any APRN authorized to prescribe controlled substances shall provide to the board a copy of his or her initial Louisiana Controlled Dangerous Substance permit and Drug Enforcement Administration registration number prior to prescribing or distributing controlled substances;

iii. controlled substances which may be prescribed by an APRN shall include Schedule II, III, IV and V. Controlled substances shall be limited to, consistent with, and exclusively within the parameters of the practice specialty of the collaborating physician and in the APRN's licensed role and population focus. The APRN must have been approved by the board to prescribe and distribute noncontrolled substances. The applicant must submit a collaborative practice agreement that clearly states that the controlled substances prescribed have been jointly agreed upon with the collaborating physician;

iv. the APRN must submit a collaborative practice agreement which delineates controlled substances utilization, which specifies the circumstances, limitations and extent to which such substances may be prescribed or distributed;

v. the APRNs application must state an identified need for controlled substances within the patient population served by the collaborative practice;

vi. the collaborative practice agreement must contain acknowledgment of responsibility by the collaborating physician to ensure that the controlled substance authority of an APRN is utilized in a manner that is consistent with any rule or regulation imposed upon the APRNs practice;

vii. the APRN who is authorized to prescribe controlled substances must determine the type, dosage form, frequency of application of controlled substances prescribed to a patient. This responsibility must never be delegated to any other personnel;

viii. the APRN shall insure that the complete name and address of the patient to whom the APRN is prescribing the controlled substance appears on the prescription;

ix. the APRN shall not permit any prescription for controlled substances to be signed by any other person in the place of or on behalf of the APRN;

x. the APRN may utilize telefaxes as original prescriptions for Schedule III-V as long as it has a true electronic signature;

xi. no APRN shall prescribe any controlled substance or other drug having addiction-forming or addiction-sustaining liability without a good faith prior examination and medical indication.

3. - 3.a...

b. The Louisiana State Board of Nursing has the authority to conduct random audits of patient records at practice sites where APRNs have been granted approval for prescribing legend and controlled substances.

4. - 4.d....

5. Continued Competency for Prescriptive Authority. Each year an APRN with prescriptive authority shall obtain six contact hours of continuing education in pharmacotherapeutics in their advanced nursing role and population foci. Documentation of completion of the continuing education contact hours required for prescriptive authority shall be submitted at the request of the board in a random audit procedure at the time of the APRN's license renewal. In order for the continuing education program to be approved by the board, the program shall:

a. be provided by a board approved national certifying organization or provider approved by the board;

b. include content relevant to advanced practice nursing and the use of pharmacological agents in the prevention of illness, and the restoration and maintenance of health;

6. APRN prescriptive authority may be renewed after review and approval by the board;

7. Changes in prescriptive authority; the APRN shall notify the board in writing requesting approval of all changes regarding physicians and practice sites including the addition and deletion of any collaborating physicians within 30 days

a. prior to adding new collaborating physician(s) or dentist(s) and sites concurrently (ie. new employment) to prescriptive authority privileges, the APRN shall notify the Board in writing requesting approval of such additions on forms provided by the board and submit a collaborative practice agreement;

b. prior to the addition of physician(s) or dentist(s) to a collaborative practice agreement at a site that has previously been approved by the board, the APRN shall;

i. obtain a collaborative practice agreement which is signed by the additional physician(s) or dentist(s). The collaborative practice agreement shall be identical in all aspects and content to the collaborative practice agreement which has been previously approved by the board for collaborating physician(s) or dentist(s) at this site;

ii. maintain the signed collaborative practice agreement on site at all times and provide a copy to board staff at any time it is requested;

iii. notify the board in writing within 30 days of the addition of the collaborating physician(s) or dentist(s) on a form provided by the board;

iv. provide any additional documents as requested by the board;

v. Cease practicing with a collaborating physician(s) or dentist(s) if notified by the board to do so;

c. Failure to abide by all provisions of this part may result in disciplinary action.

8. - 14.a. ...

b. patients are entitled to the same freedom of choice in selecting who will fill their prescription needs as they are in the choice of an APRN. The prescription is a written or electronic direction for a therapeutic or corrective agent. A patient is entitled to a copy of the APRN's prescription for drugs or other devices. The patient has a right to have the prescription filled wherever the patient wishes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 10:598 (August 1984), amended by the Department of Health and Hospitals, Board of Nursing, LR 22:283 (April 1996), amended by the Department of Health and Hospitals, Board of Nursing and Board of Medical Examiners, LR 22:981 (October 1996), LR 25:1245 (July 1999), LR, amended by the Department of Health and Hospitals, Board of Nursing, 27:727 (May 2001), amended by the Department of Health and Hospitals, Board of Nursing and Board of Medical Examiners, LR 28:487 (March 2002) repromulgated LR 28:1205 (June 2002), amended LR 31:2023 (August 2005), LR 39:

§4517. Additional Standards for Each Advanced Practice Nurse Category

A. The APRN is responsible and accountable for compliance to the specific standards of practice for his/her specialty and functional role and for other state and federal rules and regulations that effect his/her patient population(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 22:284 (April 1996), amended LR 27:727 (May 2001), LR 31:2027 (August 2005), LR 39:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? The proposed Rule will not affect the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The proposed Rule will not affect the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This Rule will not affect the functioning of the family.

4. What effect will this have on family earnings and family budget? This Rule will have some affect on family earnings for new graduates of APRN programs due to the elimination of temporary permits to practice as APRNs and authority to practice as APRNs only after certification requirement has been achieved. Individuals so impacted may continue to practice as a Registered Nurse while awaiting certification. The time requirements vary based on category of APRN however, usually can be achieved within 30 days following graduation. Further, this rule will have some effect on family earnings for APRNs who fail to maintain certification which is a provision for licensure. APRNs who fail to maintain certification licensure requirement will not be authorized to practice as an APRN until recertification is achieved. Individuals so impacted may continue to practice as a registered nurse while awaiting recertification

5. What effect will this have on behavior and personal responsibility of children? This Rule will not affect the behavior or personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, the action proposed is strictly a state enforcement function.

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Small Business Statement

It is anticipated that the proposed Rule will not have a significant adverse impact on small businesses as defined in

the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed rule to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Public Comments

All interested persons may submit written comments until 5 p.m., May 10, 2013 to Barbara L. Morvant, Executive Director, Louisiana State Board of Nursing, 17373 Perkins Road, Baton Rouge, LA 70810.

Barbara Morvant
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Advance Practice Registered Nurses

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Other than publication costs associated with the rule changes, which are estimated to be \$2,132 in FY 13, it is not anticipated that state or local governmental units will incur any other costs or savings as a result of promulgation of the proposed rule. The proposed rule will align with national standards and regulations across all jurisdictions. The rule changes to sections 4503 and 4505 primarily provide clarity concerning definitions and roles of Advanced Practice Registered Nurses (APRN), thereby aligning with these national standards. This rule does not require an increase or decrease in workload responsibilities to the Board.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The rule changes to section 4507 add a new provision that is subject to the Board's \$100 reinstatement fee. It requires APRNs that fail to maintain current certification to file a reinstatement application and pay the Board a \$100 fee. The Board's revenue will increase depending on the number of APRNs this provision applies to. Otherwise, it is anticipated that implementation of the proposed rule will not affect state or local governmental revenue collections as there are no new or eliminated fees introduced with the rule changes.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Section 4507 requires APRNs that do not maintain current certification to pay the Board's \$100 reactivation fee for their license and incur varying costs associated with recertification. In addition, the APRN temporary permit's applicability is changing. Previously, APRN applicants that were awaiting certification qualified for the temporary permit, and there were no requirements regarding timeliness of the initial application for licensure. Under the rule change, the temporary permit is required for applicants who waited over 2 years to initially apply for APRN licensure after completion of their graduate studies and certification. This requires the APRN to practice in a limited capacity while the Board verifies competency of the applicant due to the long time delay before an application is filed. Outside of potential costs associated with education needed to meet the additional competency standards set by the Board (such as continuing education credits and preceptorship), there is no impact to the individual as a result of changes to temporary permits.

Under the changes to section 4513, specific educational and training requirements are amended in order for an APRN to obtain prescriptive authority. Specifically, an APRN must now

complete 45 contact hours in advanced health assessment. Costs for this educational course will vary by institution. Also, the time requirement for 500 hours of clinical practice lengthened from 1 year to 2 years, which benefits the APRN by giving extra time to complete the workload. In order to specifically prescribe controlled substances, the rules are amended so that APRNs no longer need to complete 500 hours of practice with a collaborating physician, and APRNs may be permitted to apply to prescribe Schedule II controlled substances, if it is considered within the parameters of the practice and specialty of the collaborating physician and APRN, which will result in a cost and workload decrease that varies according to each APRN's scope of practice. Section 4513 is also amended to require that APRNs obtain and keep a collaborative practice agreement on site when adding a physician to a site that was previously approved by the Board. Though a single form will still need to be submitted, this eliminates the need to send the collaborative practice agreement to the Board office, thus benefiting the APRN in cost and efficiency.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Standardization under the proposed rule changes affects the livelihood of practicing APRN's and their ability to relocate to areas experiencing health care shortages.

Barbara Morvant
Executive Director
1304#099

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Pharmacy**

**Technician Training Programs
(LAC 46:LIII.Chapter 9)**

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy hereby gives notice of its intent to amend its chapter of rules for pharmacy technicians to initially eliminate the requirement for board approval of a pharmacy technician training program, and then beginning in January 2016, to require an applicant for a pharmacy technician certificate to have completed a nationally-accredited and board approved pharmacy technician training program.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LIII. Pharmacists

Chapter 9. Pharmacy Technicians

§901. Definitions

A. As used in this Chapter, the following terms shall have the meaning ascribed to them in this Section.

Pharmacist Preceptor—Repealed.

Pharmacy Technician Candidate—an individual not yet certified as a pharmacy technician by the board who is:

a. an individual who possesses a valid registration and is working under the supervision of a pharmacist for the purpose of obtaining practical experience for certification as a pharmacy technician by the board; or

b. an individual who possesses a valid registration, and is awaiting examination.

Structured Program—Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1212.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 30:2485 (November 2004), effective January 1, 2005, amended LR 39:

§903. Pharmacy Technician Candidates

A. Registration

1. - 1.e.ii. ...

2. Issuance and Maintenance

a. Upon receipt of a properly completed application, appropriate fee, and any other documentation required by the board, the board may issue a Pharmacy Technician Candidate Registration to the applicant.

b. - d. ...

e. A pharmacy technician candidate shall notify the board, in writing, no later than 10 days following a change in location(s) of employment. The written notice shall include the candidate's name, registration number, and name, address, and permit numbers for old and new employers.

B. Practical Experience

1. The candidate shall possess a registration prior to earning any practical experience in a pharmacy.

2. The candidate's registration shall be conspicuously displayed in the prescription department.

3. The candidate shall wear appropriate attire and be properly identified as to name and candidate status while on duty in the prescription department.

4. A candidate shall not work in a permitted site that is on probation with the board, or with a pharmacist who is on probation with the board.

5. The candidate's registration shall evidence his authority to earn a minimum of 600 hours of practical experience in a pharmacy, under the supervision of a pharmacist, in satisfaction of the requirements for pharmacy technician certification.

6. A candidate may receive board credit for a maximum of 50 hours per week.

7. Hours of practical experience earned by a candidate shall expire one year after the expiration date of the registration.

C. Examination

1. A board-approved technician examination shall consist of integrated pharmacy subject matter and any other disciplines the board may deem appropriate in order to permit the candidate to demonstrate his competency. The candidate shall achieve a passing score, as determined by the board.

2. Re-Examination

a. Following the first or second unsuccessful attempt of an examination, the candidate may be permitted to retake that examination.

b. Following the third unsuccessful attempt of an examination, the candidate shall wait one year after the date of the last examination to retake that examination. If the candidate fails to wait the prescribed one year period, the board may delay any future certification until that one year period has elapsed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1212.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, repromulgated LR 19:1025 (August 1993), amended LR 23:1307 (October 1997), LR 30:2485 (November 2004), effective January 1, 2005, amended LR 39:

§905. Pharmacy Technician Certificate

A. Qualifications

1. - 2. ...

3. An applicant shall demonstrate the following educational competencies:

a. shall be a graduate from a high school approved by a state department of education, or shall possess an equivalent degree of education, as evidenced by a valid and legible copy of a diploma, transcript, or other appropriate credential; and

b. For those applicants submitting applications on or after January 1, 2016, the applicant shall demonstrate successful completion of a nationally-accredited and board-approved pharmacy technician training program, as evidenced by a valid and legible copy of the appropriate credential from that program.

4. An applicant shall demonstrate evidence of at least 600 hours of practical experience under the supervision of a pharmacist, using a form supplied by the board.

A.5. - B.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1212.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 30:2486 (November 2004), effective January 1, 2005, amended LR 38:1235 (May 2012), amended LR 39:

§909. Continuing Education

A. A minimum of one technician-specific ACPE or board-approved CPE unit, or 10 credit hours, shall be required each year as a prerequisite for annual renewal of a pharmacy technician certificate. Such CPE units shall be credited in the 12-month period prior to the expiration date of the certificate.

B. - D.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1212.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 30:2487 (November 2004), effective January 1, 2005, amended LR 39:

Family Impact Statement

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a family impact statement on the Rule proposed for adoption, repeal, or amendment.

1. The effect on the stability of the family. We can discern no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. To the extent that parents have an influence on their children who desire to receive training as a pharmacy technician, the proposal should provide more autonomy for them to select the training program of their choice.

3. The effect on the functioning of the family. We can discern no effect on the functioning of the family.

4. The effect on family earnings and family budget. We can discern no effect on family earnings or family budget.

5. The effect on the behavior and personal responsibility of children. We can discern no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed Rule. We can discern no effect on the ability of the family or a local government to perform the activity as contained in the proposed Rule.

Poverty Impact Statement

In accordance with Section 973 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a poverty impact statement on the Rule proposed for adoption, repeal, or amendment.

1. The effect on household income, assets, and financial security. We anticipate no impact from the proposed Rule on household income, assets, or financial security.

2. The effect on early childhood development and preschool through postsecondary education development. We anticipate no impact from the proposed Rule on early childhood development or preschool through postsecondary education development.

3. The effect on employment and workforce development. We anticipate no impact from the proposed Rule on employment or workforce development.

4. The effect on taxes and tax credits. We anticipate no impact from the proposed Rule on taxes or tax credits.

5. The effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance. We anticipate no impact from the proposed Rule on child and dependent care, housing, health care, nutrition, transportation, or utilities assistance.

Small Business Statement

In accordance with Section 965 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a regulatory flexibility analysis on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, each of the following methods of reducing the impact of the proposed Rule on small businesses:

1. The establishment of less stringent compliance or reporting requirements for small businesses. The proposed Rule change would not change any recordkeeping or reporting requirements.

2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses. There are no changes in the deadlines for compliance or reporting requirements.

3. The consolidation or simplification of compliance or reporting requirements for small businesses.

There are no changes in the reporting requirements.

4. The establishment of performance standards for small businesses to replace design or operational standards required in the proposed Rule. There are no design or operational standards in the proposed Rule.

5. The exemption of small businesses from all or any part of the requirements contained in the proposed Rule. There are no exemptions for small businesses in the proposed Rule.

Public Comments

Interested persons may submit written comments to Malcolm J Broussard, Executive Director, Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. He is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, May 30, 2013 at 1 p.m. in the Board office. At that time, all interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. The deadline for the receipt of all comments is 4 p.m. that same day.

Malcolm J Broussard
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Technician Training Programs

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There is an anticipated cost of \$1,000 to the Board for printing costs to promulgate the proposed amendments (\$500 in FY 13 and \$500 in FY 14). The Board proposes to initiate a new requirement effective January 1, 2016, requiring an applicant for a pharmacy technician certificate to demonstrate successful completion of a nationally-accredited and board-approved pharmacy technician training program as opposed to current state and local programs. For those state or local governmental units that choose to operate nationally accredited pharmacy technician training programs beginning in 2016, the initial application fee for accreditation is \$450 and the annual assessment for an accredited program is \$2,105 to be paid to the American Society of Health-System Pharmacists (ASHP). The net impact on costs of operating a pharmacy technician training program under the current rules versus under a nationally-accredited program beginning in 2016 is unknown due to the varying nature of each pharmacy's current training program. Currently, each pharmacy sets its own standards for technician training; therefore, some already operate under national standards and will see no change in costs, but some pharmacies (often smaller, local pharmacies) create their own programs based on their scope of practice. These training programs would likely see a greater difference in costs when switching to a nationally-accredited program and may or may not choose to continue training technicians. As a result, the total net impact to state and local programs is indeterminable.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated effect on revenue collections for state or local governmental units as a result of this rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Graduates of a nationally accredited pharmacy technician training program are more likely to pass the certification examination on their first attempt, thereby saving the costs of repeated attempts of the certification examination. There is currently only a 68% state participant pass rate.

In addition, for private pharmacies that newly choose to operate nationally accredited pharmacy technician training program beginning in 2016, the initial application fee for

accreditation is \$450 and the annual assessment for an accredited program is \$2,105 to be paid to the American Society of Health-System Pharmacists (ASHP). The net impact on costs of operating a pharmacy technician training program under the current rules versus under a nationally-accredited program beginning in 2016 is unknown due to the varying nature of each pharmacy's current training program. Currently, each pharmacy sets its own standards for technician training; therefore, some already operate under national standards and will see no change in costs, but some pharmacies create their own programs based on their scope of practice. These training programs would likely see a greater difference in costs when switching to a nationally-accredited program and may or may not choose to continue training technicians. As a result, the total net impact to private pharmacies is indeterminable.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The board anticipates that graduates of nationally accredited training programs may achieve certification sooner than otherwise, and are more likely to improve their employment potential in the marketplace.

Malcolm Broussard
Executive Director
1304#044

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing and Office of Aging and Adult Services

Home and Community-Based Services Waivers
Community Choices Waiver
(LAC 50:XXI.8105, 8301, 8307,
8325, 8327, 8501, and 9501)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XXI.8105, §8301, §8307, §8501, §9501 and to adopt §8325-8327 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amended the provisions governing the Community Choices Waiver Program to clarify provisions governing the delivery of services, to remove the wage pass-through language that was erroneously included in the Rule, and to comply with a court-mandated standard for use in the determination of expedited Community Choices Waiver slots and addition of waiver opportunities (*Louisiana Register*, Volume 39, Number 2).

The department now proposes to amend the provisions governing the Community Choices Waiver to add two new waiver services, to incorporate a new service delivery method, and to clarify the provisions governing personal assistance services.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community Based Services
Waivers

Subpart 7. Community Choices Waiver

Chapter 81. General Provisions

§8105. Programmatic Allocation of Waiver Opportunities

A. - B.2. ...

3. individuals who are residing in a State of Louisiana permanent supportive housing unit or who are linked for the State of Louisiana permanent supportive housing process;

4. individuals admitted to a nursing facility who are approved for a stay of more than 90 days;

a - d. Repealed.

5. individuals who are not presently receiving home and community-based services (HCBS) under another approved Medicaid waiver program, including, but not limited to the:

a. adult day health care (ADHC) Waiver;

b. new opportunities waiver (NOW);

c. supports waiver, and/or

d. residential options waiver (ROW); and

6. all other eligible individuals on the request for services registry (RFSR), by date of first request for services.

C. - E.2.e. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3517 (December 2011), amended LR 39:319 (February 2013), LR 39:

Chapter 83. Covered Services

§8301. Support Coordination

A. - B.1.c. ...

B.2. Support coordinators shall be available to participants for ongoing support and assistance in these decision-making areas and with employer responsibilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3519 (December 2011), amended LR 39:319 (February 2013), LR 39:

§8307. Personal Assistance Services

A. - A.3. ...

4. supervision or assistance with health related tasks (any health related procedures governed under the Nurse Practice Act) where the direct service worker has received proper training pursuant to R.S. 37:1031-1034;

A.5 - D.4. ...

5. "a.m. and p.m." PAS cannot be "shared;"

6. it is permissible to receive only the "a.m." or "p.m." portion of PAS within a calendar day;

7. "a.m." and/or "p.m." PAS may not be provided on the same calendar day as other LT-PCS delivery methods;

8. PAS providers must be able to provide both regular and "a.m." and "p.m." PAS and cannot refuse to accept a Community Choices Waiver participant solely due to the type of PAS delivery method that is listed on the POC.

E. - I.6. ...

J. Participants are not permitted to receive PAS while living in a home or property owned, operated, or controlled by an owner, operator, agent, or employee of a licensed provider of long-term care services and providers are prohibited from providing and billing for services under these circumstances. Participants may not live in the home of a direct support worker unless the direct support is related by blood or marriage to the participant.

K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3519 (December 2011), amended LR 39:320 (February 2013), LR 39:

§8325. Housing Transition or Crisis Intervention Services

A. Housing transition or crisis intervention services enable participants who are transitioning into a permanent supportive housing unit, including those transitioning from institutions, to secure their own housing or provide assistance at any time the participant's housing is placed at risk (e.g., eviction, loss of roommate or income). The service includes the following components:

1. conducting a housing assessment identifying the participant's preferences related to housing (type, location, living alone or with someone else, accommodations needed, and other important preferences), and identifying his/her needs for support to maintain housing, including:

a. access to housing;

b. meeting the terms of a lease;

c. eviction prevention;

d. budgeting for housing/living expenses;

e. obtaining/accessing sources of income necessary

for rent;

f. home management;

g. establishing credit; and

h. understanding and meeting the obligations of tenancy as defined in the lease terms;

2. assisting the participant to view and secure housing as needed. This may include arranging or providing transportation. The participant shall be assisted in securing supporting documents/records, completing/submitted applications, securing deposits, and locating furnishings;

3. developing an individualized housing support plan based upon the housing assessment that:

a. includes short- and long-term measurable goals for each issue;

b. establishes the participant's approach to meeting the goal; and

c. identifies where other provider(s) or services may be required to meet the goal;

4. participating in the development of the plan of care and incorporating elements of the housing support plan;

5. looking for alternatives to housing if permanent supportive housing is unavailable to support completion of transition; and

6. communicating with the landlord or property manager regarding the participant's disability, accommodations needed, and components of emergency procedures involving the landlord or property manager.

B. If at any time the participant's housing is placed at risk (e.g. eviction, loss of roommate or income), housing transition or crisis intervention services will provide supports to retain housing or locate and secure housing to continue community based supports including locating new housing, sources of income, etc.

C. This service is only available upon referral from the support coordinator. This service is not duplicative of other waiver services, including support coordination. It is only available to persons who are residing in a State of Louisiana permanent supportive housing unit or who are linked for the State of Louisiana permanent supportive housing selection process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:

§8327. Housing Stabilization Services

A. Housing stabilization services enable waiver participants to maintain their own housing as set forth in the participant's approved plan of care. Services must be provided in the home or a community setting. This service includes the following components:

1. participation in the plan of care renewal and updates as needed, incorporating elements of the housing support plan;

2. providing supports and interventions per the individualized housing support plan. If additional supports or services are identified as needed outside the scope of housing stabilization services, the needs must be communicated to the support coordinator;

3. providing ongoing communication with the landlord or property manager regarding the participant's disability, accommodations needed, and components of emergency procedures involving the landlord or property manager; and

4. updating the housing support plan annually or as needed due to changes in the participant's situation or status.

B. This service is only available upon referral from the support coordinator. This service is not duplicative of other waiver services including support coordination. It is only available to persons who are residing in a state of Louisiana permanent supportive housing unit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:

Chapter 85. Self-Direction Initiative

§8501. Self-Direction Service Option

A. - D.2....

E. A portion of the overall budget will be used to offset administrative costs for the fiscal management agency. After this portion has been deducted from the overall budget, the remainder will be the budget amount for the individual participant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3523 (December 2011); amended LR 39:321 (February 2013), LR 39:

Chapter 95. Reimbursement

§9501. Reimbursement Methodology

A. - A.2....

3. caregiver temporary support services when provided by an adult day health care center;

4. adult day health care services;

5. housing transition or crisis intervention services; and

6. housing stabilization services.

B. - L.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3525 (December 2011), amended LR 39:322 (February 2013), LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability or autonomy as described in R.S. 49:972 by providing access to housing-related support services.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 by ensuring waiver participants have access to housing-related support services.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, May 29, 2013 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Kathy H. Kliebert
Interim Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**
**RULE TITLE: Home and Community-Based Services
Waivers—Community Choices Waiver**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed Rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 12-13 since Community Choice Waiver participants have a set annual service budget. The additional service options will not change the annual cap on a waiver participants total service budget. It is anticipated that \$984 (\$492 SGF and \$492 FED) will be expended in FY 12-13 for the state's administrative expense for promulgation of this proposed Rule and the final Rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed Rule will not affect revenue collections other than the federal share of the promulgation costs for FY 12-13. It is anticipated that \$492 will be collected in FY 12-13 for the federal share of the expense for promulgation of this proposed Rule and the final Rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

This proposed Rule amends the provisions governing the Community Choices Waiver to add two new waiver services, to incorporate a new service delivery method, and to clarify the provisions governing personal assistance services. Additional service options will not increase the cap on a participant's annual total service budget. It is anticipated that implementation of this proposed Rule will not have economic cost or benefits to Community Choices Waiver providers for FY 12-13, FY 13-14 and FY 14-15.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

This Rule has no known effect on competition and employment.

J. Ruth Kennedy
Medicaid Director
1304#081

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Bureau of Health Services Financing**

Intermediate Care Facilities for Persons with
Developmental Disabilities—Non-State Facilities
Reimbursement Methodology
(LAC 50:VII.32903)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:VII.32903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

As a result of a budgetary shortfall in state fiscal year 2011, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for non-state intermediate care facilities for

persons with developmental disabilities (ICFs/DD) to reduce the per diem rates (*Louisiana Register*, Volume 36, Number 8). The final Rule was published in October 2011 (*Louisiana Register*, Volume 37, Number 10).

The department promulgated an Emergency Rule which subsequently amended the provisions governing the reimbursement methodology for non-state ICFs/DD to restore the per diem rates paid to private providers who have downsized large facilities to less than 35 beds and incurred unusually high capital costs as a result of the downsizing (*Louisiana Register*, Volume 36, Number 8). This proposed Rule is being promulgated to continue the provisions of the August 1, 2010 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care

**Subpart 3. Intermediate Care Facilities for Persons with
Developmental Disabilities**

Chapter 329. Reimbursement Methodology

Subchapter A. Non-State Facilities

§32903. Rate Determination

A. - K.1...

L. Effective for dates of service on or after August 1, 2010, the per diem rates for ICFs/DD which have downsized from over 100 beds to less than 35 beds prior to December 31, 2010 shall be restored to the rates in effect on January 1, 2009.

M. Reserved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:2253 (September 2005), amended LR 33:462 (March 2007), LR 33:2202 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1555 (July 2010), amended LR 37:3028 (October 2011), LR 39:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, May 29, 2013 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally

or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Kathy H. Kliebert
Interim Secretary

NOTICE OF INTENT

**Department of Health and Hospitals
Bureau of Health Services Financing
and
Office of Aging and Adult Services**

Personal Care Services—Long-Term
Policy Clarifications and Services
(LAC 50:XV.Chapter 129)

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Intermediate Care Facilities for Persons
with Developmental Disabilities—Non-State Facilities—
Reimbursement Methodology**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed Rule will result in an estimated increase in programmatic expenses to the state of \$114,339 for FY 12-13, \$130,338 for FY 13-14 and \$141,425 for FY 14-15. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 12-13 for the state's administrative expense for promulgation of this proposed Rule and the final Rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.96 percent in FY 13-14. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately \$227,625 for FY 12-13, \$221,547 for FY 13-14 and \$221,017 for FY 14-15. It is anticipated that \$164 will be expended in FY 12-13 for the federal administrative expenses for promulgation of this proposed Rule and the final Rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.96 percent in FY 13-14. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

This proposed Rule, which continues the provisions of the August 1, 2010 Emergency Rule, amends the provisions governing the reimbursement methodology for non-state intermediate care facilities for persons with developmental disabilities (ICFs/DD) to restore the per diem rates paid to private providers who have downsized large facilities to less than 35 beds and incurred unusually high capital costs as a result of the downsizing (approximately 35 facilities). It is anticipated that implementation of this proposed rule will increase expenditures in the Medicaid Program by approximately \$341,636 for FY 12-13, \$351,885 for FY 13-14 and \$362,442 for FY 14-15.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

It is anticipated that the implementation of this proposed Rule will not have an effect on competition and employment.

J. Ruth Kennedy
Medicaid Director
1304#082

Evan Brasseaux
Staff Director
Legislative Fiscal Office

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XV.Chapter 129 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Senate Resolution 180 and House Resolution 190 of the 2008 Regular Session of the Louisiana Legislature directed the department to develop and implement cost control mechanisms to provide the most cost-effective means of financing the Long-Term Personal Care Services (LT-PCS) Program. In compliance with these legislative directives, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amended the provisions governing the LT-PCS Program to: 1) implement uniform needs-based assessments for authorizing service units; 2) reduce the limit on LT-PCS service hours; 3) mandate that providers must show cause for refusing to serve clients; and 4) incorporate provisions governing an allocation of weekly service hours (*Louisiana Register*, Volume 35, Number 11).

The department promulgated an Emergency Rule which amended the provisions governing long-term personal care services to: 1) establish provisions that address requests for services; 2) revise the eligibility criteria for LT-PCS; 3) clarify the provisions governing restrictions for paid direct care staff and the place of service; and 4) reduce the maximum allowed service hours (*Louisiana Register*, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions of the September 5, 2010 Emergency Rule to clarify the provisions of the Rule (*Louisiana Register*, Volume 36, Number 12). The department promulgated an Emergency Rule which amended the provisions of the December 20, 2010 Emergency Rule to further clarify the provisions of the Rule (*Louisiana Register*, Volume 37, Number 4).

The department promulgated an Emergency Rule which amended the provisions of the April 20, 2011 Emergency Rule to bring these provisions in line with current licensing standards (*Louisiana Register*, Volume 37, Number 11). The department promulgated an Emergency Rule which amended the November 20, 2011 Emergency Rule to clarify the provisions governing the staffing requirements for LT-PCS (*Louisiana Register*, Volume 38, Number 1). The January 20, 2012 Emergency Rule was published with an error in the effective date and repromulgated with an editor's note in the

February 2012 *Louisiana Register* (*Louisiana Register*, Volume 38, Number 2). The department promulgated an Emergency Rule which amended the January 20, 2012 Emergency Rule to clarify provisions governing the place of service delivery (*Louisiana Register*, Volume 38, Number 2).

The department now proposes to amend the provisions governing long-term personal care services in order to change the allocation of service hours from weekly to an annual budgetary allocation, to incorporate a new service delivery method, and to clarify the provisions governing the reimbursement methodology for LT-PCS. This proposed Rule will also continue the provisions of the February 20, 2012 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 9. Personal Care Services

Chapter 129. Long Term Care

§12901. General Provisions

A. The purpose of personal care services is to assist individuals with functional impairments with their daily living activities. Personal care services must be provided in accordance with an approved service plan and supporting documentation. In addition, personal care services must be coordinated with the other Medicaid and non-Medicaid services being provided to the recipient and will be considered in conjunction with those other services.

B. Each recipient requesting or receiving long-term personal care services (LT-PCS) shall undergo a functional eligibility screening utilizing an eligibility screening tool called the Level of Care Eligibility Tool (LOCET), or a subsequent eligibility tool designated by the Office of Aging and Adult Services (OAAS).

C. Each LT-PCS applicant/recipient shall be assessed using a uniform assessment tool called the Minimum Data Set-Home Care (MDS-HC) or a subsequent assessment tool designated by OAAS. The MDS-HC is designed to verify that an individual meets eligibility qualifications and to determine resource allocation while identifying his/her need for support in performance of activities of daily living (ADLs) and instrumental activities of daily living (IADLs). The MDS-HC assessment generates a score which measures the recipient's degree of self-performance of late-loss activities of daily living during the period just before the assessment.

1. The late-loss ADLs are eating, toileting, transferring and bed mobility. An individual's assessment will generate a score which is representative of the individual's degree of self-performance on these four late-loss ADLs.

2. - 7. Repealed.

D. Based on the applicant's/recipient's uniform assessment score, he/she is assigned to a level of support category and is eligible for an annual services budget associated with that level.

1. If the applicant/recipient disagrees with his/her annual services budget, the applicant/recipient or his/her responsible representative may request a fair hearing to appeal the decision.

2. The applicant/recipient may qualify for an increase in the annual services budget if it can be demonstrated that:

a. one or more answers to the questions involving late-loss ADLs are incorrect as recorded on the assessment; or

b. he/she needs an increase in the annual services budget to avoid entering into a nursing facility.

E. Requests for personal care services shall be accepted from the following individuals:

1. a Medicaid recipient who wants to receive personal care services;

2. an individual who is legally responsible for a recipient who may be in need of personal care services; or

3. a responsible representative designated by the recipient to act on his/her behalf in requesting personal care services.

F. Each recipient who requests PCS has the option to designate a responsible representative. For purposes of these provisions, a responsible representative shall be defined as the person designated by the recipient to act on his/her behalf in the process of accessing and/or maintaining personal care services.

1. The appropriate form authorized by OAAS shall be used to designate a responsible representative.

a. The written designation of a responsible representative does not give legal authority for that individual to independently handle the recipient's business without his/her involvement.

b. The written designation is valid until revoked by the recipient. To revoke the written designation, the revocation must be submitted in writing to OAAS or its designee.

2. The functions of a responsible representative are to:

a. assist and represent the recipient in the assessment, care plan development and service delivery processes; and

b. to aid the recipient in obtaining all necessary documentation for these processes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:911 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 32:2082 (November 2006), LR 34:2577 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2450 (November 2009), amended LR 39:

§12902. Participant Direction Option

A. The Office of Aging and Adult Services implements the Louisiana Personal Options Program (La POP), which will allow recipients who receive long term personal care services (LT-PCS) to use an alternative method of receiving and managing their services. Rather than accessing their personal care services through a traditional personal care agency, the participant direction option will allow recipients to direct and manage their own services, including direct hiring of workers, with the assistance of a fiscal management agency and with counseling support.

1. La POP shall be implemented through a phased-in process in Department of Health and Hospitals administrative regions designated by OAAS.

A.2. - B.1. ...

2. With the assistance of a services consultant, participants develop a personal support plan based on their approved plan of care and choose the individuals they wish to hire to provide the services.

C. - E.1. ...

2. Change in Condition. The participant's ability to direct his/her own care diminishes to a point where he/she can no longer do so and there is no responsible representative available to direct the care.

3. Misuse of Monthly Allocation of Funds. The LA POP participant or his/her responsible representative uses the monthly budgeted funds to purchase items unrelated to personal care needs or otherwise misappropriate the funds.

4. Failure to Provide Required Documentation. The participant or his/her responsible representative fails to complete and submit employee time sheets in a timely and accurate manner, or provide required documentation of expenditures and related items as prescribed in the Louisiana Personal Options Program's Roles and Responsibility agreement.

5. ...

F. A portion of the overall budget will be used to offset administrative costs for the fiscal management agency. After the portion has been deducted from the overall budget, the remainder will be the budget amount for the individual participant. The participant will allocate these budget funds to cover personal support services and other items in his/her approved personal support plan.

1. Expenditures shall only be made in accordance with the approved personal supports plan and the Louisiana Personal Options Program guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2578 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:

§12903. Covered Services

A. Personal care services are defined as those services that provide assistance with the distinct tasks associated with the performance of the activities of daily living (ADLs) and the instrumental activities of daily living (IADLs). Assistance may be either the actual performance of the personal care task for the individual or supervision and prompting so the individual performs the task by him/herself. ADLs are those personal, functional activities required by the recipient. ADLs include tasks such as:

1. - 5. ...

6. ambulation;
7. toileting; and
8. bed mobility.

B. IADLs are those activities that are considered essential, but may not require performance on a daily basis. IADLs cannot be performed in the recipient's home when he/she is absent from the home. IADLs include tasks such as:

1. - 2. ...

3. food preparation and storage;
4. shopping;
5. laundry;
6. assisting with scheduling medical appointments when necessary;

7. accompanying the recipient to medical appointments when necessary;

8. assisting the recipient to access transportation;

9. reminding the recipient to take his/her medication as prescribed by the physician; and

10. medically non-complex tasks where the direct service worker has received the proper training pursuant to R.S. 37:1031-1034.

C. Emergency and nonemergency medical transportation is a covered Medicaid service and is available to all recipients. Non-medical transportation is not a required component of personal care services. However, providers may choose to furnish transportation for recipients during the course of providing personal care services. If transportation is furnished, the provider agency must accept any liability for their employee transporting a recipient. It is the responsibility of the provider agency to ensure that the employee has a current, valid driver's license and automobile liability insurance.

1. La POP participants may choose to use some of their monthly budget to purchase non-medical transportation.

a. If transportation is furnished, the participant must accept all liability for their employee transporting them. It is the responsibility of the participant to ensure that the employee has a current, valid driver's license and automobile liability insurance.

D. ...

E. La POP participants may choose to use their services budgets to pay for items that increase their independence or substitute for their dependence on human assistance. Such items must be purchased in accordance with the policies and procedures established by OAAS.

F. Personal care services may be provided by one worker for up to three long-term personal care service recipients who live together and who have a common direct service provider. Shared LT-PCS is to be reflected in the POC of each participant. Reimbursement rates shall be adjusted accordingly.

G. "A.M. and P.M." Delivery Option

1. LT-PCS may be provided through the "a.m. and p.m." delivery option defined as follows:

a. a minimum of one hour and a maximum of two hours of LT-PCS provided to assist the participant at the beginning of his/her day, referred to as the "a.m." portion of this LT-PCS delivery method;

b. a minimum of one hour and a maximum of two hours to assist the participant at the end of his/her day, referred to as the "p.m." portion of this LT-PCS delivery method; and

c. a minimum of four hours break between the "a.m." and the "p.m." portions of this LT-PCS delivery method.

2. This delivery model shall not exceed a maximum of four hours of LT-PCS being provided within a calendar day.

3. "A.m. and p.m." LT-PCS cannot be "shared."

4. It is permissible to receive only the "a.m." or "p.m." portion of LT-PCS within a calendar day.

5. "A.m." and/or "p.m." LT-PCS may not be provided on the same calendar day as other LT-PCS delivery methods.

6. LT-PCS providers must be able to provide both regular and "a.m." and "p.m." LT-PCS, and cannot refuse to

accept a recipient of LT-PCS solely due to the type of LT-PCS delivery method that is listed on the POC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2578 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Aging and Adult Services, LR 39:

§12905. Eligibility Criteria

A. ...

B. Recipients must meet the eligibility criteria established by OAAS or its designee. Personal care services are medically necessary if the recipient:

1. meets the medical standards for admission to a nursing facility and requires limited assistance with at least one or more activities of daily living;

B.2. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:2082 (November 2006), LR 34:2579 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:

§12907. Recipient Rights and Responsibilities

A. - A.2. ...

3. training the individual personal care worker in the specific skills necessary to maintain the recipient's independent functioning while maintaining him/her in the home;

4. developing an emergency component in the plan of care that includes a list of personal care staff who can serve as back-up when unforeseen circumstances prevent the regularly scheduled worker from providing services;

5. - 9. ...

B. Changing Providers. Recipients may request to change PCS agencies without cause once after each three month interval during the service authorization period. Recipients may request to change PCS providers with good cause at any time during the service authorization period. Good cause is defined as the failure of the provider to furnish services in compliance with the plan of care. Good cause shall be determined by the OAAS or its designee.

C. In addition to these rights, a La POP participant has certain responsibilities, including:

1. ...

2. notifying the services consultant at the earliest reasonable time of admission to a hospital, nursing facility, rehabilitation facility or any other institution;

2.a. - 8. ...

9. training the direct service worker in the specific skills necessary to maintain the participant's independent functioning to remain in the home;

10. - 13. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2832 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2579 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:

§12909. Standards for Participation

A. - A.1.c. ...

d. any federal or state laws, Rules, regulations, policies and procedures contained in the Medicaid provider manual for personal care services, or other document issued by the department. Failure to do may result in sanctions.

2. ...

B. In addition, a Medicaid enrolled agency must:

1. maintain adequate documentation as specified by OAAS, or its designee, to support service delivery and compliance with the approved POC and will provide said documentation at the request of the department or its designee; and

2. assure that all agency staff is employed in accordance with Internal Revenue Service (IRS) and Department of Labor regulations.

3. - 12.c. Repealed.

C. An LT-PCS provider shall not refuse to serve any individual who chooses his agency unless there is documentation to support an inability to meet the individual's needs, or all previous efforts to provide service and supports have failed and there is no option but to refuse services.

C.1. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2832 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2579 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2451 (November 2009), amended LR 39:

§12910. La POP Standards for Participation

A. Direct service workers employed under La POP must complete all of the training mandated by OAAS within the specified timelines.

B. All workers must be employed in accordance with Internal Revenue Service (IRS) and Department of Labor regulations.

B.1. - C. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2580 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:

§12911. Staffing Requirements

A. All staff providing direct care to the recipient, whether they are employed by a PCS agency or a recipient participating in La POP, must meet the qualifications for furnishing personal care services per the licensing regulations. The direct service worker shall demonstrate

empathy toward the elderly and persons with disabilities, an ability to provide care to these recipients, and the maturity and ability to deal effectively with the demands of the job.

B. Restrictions

1. The following individuals are prohibited from being reimbursed for providing services to a recipient:

- a. the recipient's spouse;
- b. the recipient's curator;
- c. the recipient's tutor;
- d. the recipient's legal guardian;
- e. the recipient's designated responsible representative; or

f. the person to whom the recipient has given Representative and Mandate authority (also known as Power of Attorney).

B.2. - E.1.b. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2832 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2580 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Aging and Adult Services, LR 39:

§12912. Training

A. Training costs for direct service workers employed by La POP participants shall be paid out of the La POP participant's personal supports plan budget.

B. - H. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2580 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:

§12913. Service Delivery

A. Personal care services shall be provided in the recipient's home or in another location outside of the recipient's home if the provision of these services allows the recipient to participate in normal life activities pertaining to the IADLs cited in the plan of care. The recipient's home is defined as the place where he/she resides such as a house, an apartment, a boarding house, or the house or apartment of a family member or unpaid primary care-giver. IADLs cannot be performed in the recipient's home when the recipient is absent from the home:

1. - 4. Repealed.

B. The provision of services outside of the recipient's home does not include trips outside of the borders of the state without written prior approval of OAAS or its designee, through the plan of care or otherwise.

C. Participants are not permitted to receive LT-PCS while living in a home or property owned, operated, or controlled by an owner, operator, or agent of a licensed provider of long-term care services or by an immediate family member of such a provider. This prohibition applies to any owner, operator, or agent of a licensed entity as well as their immediate family members, and providers are prohibited from providing and billing for services under these circumstances. For purposes of this paragraph,

"immediate family members" are defined as the children, spouses of children, siblings, spouses of siblings, parents, spouse, and the parents of the spouse of the owner, operator, or agent.

1. Participants may not live in the home of a direct support worker unless the direct support worker is related by blood or marriage to the participant.

2. - 3. Repealed.

D. - E. ...

F. It is permissible for an LT-PCS recipient to use his/her approved LT-PCS allotment flexibly provided that it is done so in accordance with the recipient's preferences and personal schedule and is properly documented in accordance with OAAS policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003), amended LR 30:2833 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2581 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:

§12915. Service Limitations

A. The long term-personal care services budget shall be limited to an amount established by OAAS. Authorization of the annual services budget shall be considered on a case-by-case basis as substantiated by the recipient's plan of care and supporting documentation.

B. There shall be no duplication of services.

1. Personal care services may not be provided while the recipient is admitted to or attending a program which provides in-home assistance with IADLs or ADLs or while the recipient is admitted to or attending a program or setting where such assistance is available to the recipient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2581 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2451 (November 2009), amended LR 39:

§12917. Reimbursement Methodology

A. Reimbursement for personal care services shall be a prospective flat rate for each approved unit of service that is provided to the recipient. One quarter hour is the standard unit of service for personal care services that are shared or unshared, excluding the "a.m." and "p.m." service delivery method. Services furnished via the "a.m." and "p.m." service delivery method will be reimbursed on a per visit basis. Reimbursement shall not be paid for the provision of less than one quarter hour of service. Additional reimbursement shall not be available for transportation furnished during the course of providing personal care services.

B. - B.8.d. ...

C. Effective for dates of service on or after February 1, 2009, the reimbursement rate for long term personal care services shall be reduced by 3.5 percent of the rate on file as of January 31, 2009.

1. - 3. Repealed.

D. Effective for dates of service on or after August 4, 2009, the reimbursement rate for long-term personal care services shall be reduced by 4.8 percent of the rate on file as of August 3, 2009.

E. Effective for dates of service on or after August 1, 2010, the reimbursement rate for long-term personal care services shall be reduced by 4.6 percent of the rate on file as of July 31, 2010.

F. Effective for dates of service on or after January 1, 2011, the reimbursement rate for long-term personal care services shall be reduced by 5.8 percent of the rate on file as of December 31, 2010.

G. Effective for dates of service on or after April 20, 2011, shared long-term personal care services shall be reimbursed.

1. 80 percent of the rate on file as of April 19, 2011 for two participants; and

2. 70 percent of the rate on file as of April 19, 2011 for three participants.

H. ...

1. - 2. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:253 (February 2008), LR 34:2581 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:1901 (September 2009), LR 36:1251 (June 2010), LR 37:3267 (November 2011), LR 39:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821—9030. She is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, May 29, 2013 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally

or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Kathy H. Kliebert
Interim Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Care Services—Long-Term—Policy Clarifications and Services

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed Rule will result in estimated state general fund programmatic savings of \$1,702,041 for FY 12-13, \$1,944,213 for FY 13-14 and \$2,109,586 for FY 14-15. It is anticipated that \$2,132 (\$1,066 SGF and \$1,066 FED) will be expended in FY 12-13 for the state's administrative expense for promulgation of this proposed Rule and the final Rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.96 percent in FY 13-14. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed Rule will reduce federal revenue collections by approximately \$3,391,899 for FY 12-13, \$3,304,742 for FY 13-14 and \$3,296,837 for FY 14-15. It is anticipated that \$1,066 will be expended in FY 12-13 for the federal administrative expenses for promulgation of this proposed Rule and the final Rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.96 percent in FY 13-14. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule, which continues the provisions of the September 5, 2010 Emergency Rule, amends the provisions governing long-term personal care services to revise and clarify eligibility criteria, requests for services, and service delivery. This proposed Rule also changes the allocation of service hours to an annual budgetary allocation, incorporates a new service delivery method, and clarifies the reimbursement methodology. It is anticipated that implementation of this proposed Rule will reduce Programmatic expenditures in the Medicaid Program by approximately \$5,096,072 for FY 12-13, \$5,248,955 for FY 13-14 and \$5,406,423 for FY 14-15.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed Rule will not have an effect on competition. However, it is anticipated that the implementation of this proposed Rule may have a negative effect on employment as it will reduce the payments made for long-term personal care services. The reduction in payments may adversely impact the financial standing of providers and could possibly cause a reduction in employment opportunities.

J. Ruth Kennedy
Medicaid Director
1304#083

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Professional Services Program
Anesthesia Services
Reimbursement Rate Reduction
(LAC 50:IX.15133 and 15135)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:IX.15133 and §15135 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing anesthesia services in order to revise the formula-based reimbursement methodology for services rendered by physicians and certified registered nurse anesthetists (CRNAs), and to reorganize these provisions in a clear and concise manner in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 36, Number 6).

As a result of a budgetary shortfall in state fiscal year 2013, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for anesthesia services to reduce the reimbursement rates (*Louisiana Register*, Volume 38, Number 7). The department promulgated an Emergency Rule that amended the July 1, 2012 Emergency Rule to adjust the rate reduction and to include certified registered nurse anesthetists in the rate reduction (*Louisiana Register*, Volume 38, Number 8). This proposed Rule is being promulgated to continue the provisions of the July 20, 2012 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part IX. Professional Services Program

Subpart 15. Reimbursement

Chapter 151. Reimbursement Methodology

Subchapter D. Anesthesia Services

§15133. Formula-Based Reimbursement

A. - C.2....

D. Effective for dates of service on or after July 1, 2012, the reimbursement for formula-based anesthesia services shall be reduced by 3.7 percent of the rates in effect on June 30, 2012.

E. Effective for dates of service on or after July 20, 2012, the 3.7 percent reimbursement rate reduction for formula-based anesthesia services shall be adjusted to 3.4 percent of the rates in effect on June 30, 2012.

F. Effective for dates of service on or after July 20, 2012, the reimbursement for formula-based anesthesia services rendered by a CRNA shall be reduced by 3.4 percent of the rates in effect on July 19, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR

36:1251 (June 2010), amended LR 36:2282 (October 2010), LR 39:
§15135. Flat Fee Reimbursement

A. - D.1. ...

E. Effective for dates of service on or after July 1, 2012, the flat fee reimbursement rates paid for anesthesia services shall be reduced by 3.7 percent of the rates in effect on June 30, 2012.

F. Effective for dates of service on or after July 20, 2012, the 3.7 percent rate reduction for flat fee reimbursement of anesthesia services shall be adjusted to 3.4 percent of the rates in effect on June 30, 2012.

G. Effective for dates of service on or after July 20, 2012, the flat fee reimbursement for anesthesia services rendered by a CRNA shall be reduced by 3.4 percent of the rates in effect on July 19, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, amended LR 36:1251 (June 2010), LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule may have an adverse impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 in the event that health care assistance is reduced as a result of diminished provider participation.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, May 29, 2013 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Kathy H. Kliebert
Interim Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Professional Services Program
Anesthesia Services—Reimbursement Rate Reduction**

NOTICE OF INTENT

**Department of Health and Hospitals
Bureau of Health Services Financing**

Professional Services Program
Family Planning Services
Reimbursement Rate Reduction
(LAC 50:IX.15143)

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in estimated state general fund programmatic savings of \$103,234 for FY 12-13, \$118,082 for FY 13-14 and \$128,126 for FY 14-15. It is anticipated that \$410(\$205 SGF and \$205 FED) will be expended in FY 12-13 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.96 percent in FY 13-14. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$205,868 for FY 12-13, \$200,715 for FY 13-14 and \$200,235 for FY 14-15. It is anticipated that \$205 will be expended in FY 12-13 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.96 percent in FY 13-14. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule continues the provisions of the July 1, 2012 and July 20, 2012 emergency rules which amended the provisions governing the reimbursement methodology for anesthesia services to reduce the reimbursement rates. It is anticipated that implementation of this proposed rule will reduce programmatic expenditures in the Medicaid Program by approximately \$309,512 for FY 12-13, \$318,797 for FY 13-14 and \$328,361 for FY 14-15.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, it is anticipated that the implementation of this proposed rule may have a negative effect on employment as it will reduce the payments made for anesthesia services. The reduction in payments may adversely impact the financial standing of providers and could possibly cause a reduction in employment opportunities.

J. Ruth Kennedy
Medicaid Director
1304#084

Evan Brasseaux
Staff Director
Legislative Fiscal Office

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:IX.15143 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the Professional Services Program to reduce the reimbursement rates for family planning services and to promulgate these provisions in a codified format for inclusion in the *Louisiana Administrative Code (Louisiana Register, Volume 36, Number 11)*.

Due to a budgetary shortfall in state fiscal year 2013, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for family planning services to reduce the reimbursement rates (*Louisiana Register, Volume 38, Number 7*). The department promulgated an Emergency Rule which amended the July 1, 2012 Emergency Rule in order to adjust the rate reduction (*Louisiana Register, Volume 39, Number 2*). This proposed Rule is being promulgated to continue the provisions of the February 20, 2013 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part IX. Professional Services Program

Subpart 15. Reimbursement

Chapter 151. Reimbursement Methodology

Subchapter E. Family Planning Services

§15143. Reimbursement

A. - C. ...

D. Effective for dates of service on or after July 1, 2012, the reimbursement rates for family planning services rendered by a physician shall be reduced by 3.7 percent of the rates in effect on June 30, 2012.

1. Effective for dates of service on or after February 20, 2013, the 3.7 percent reimbursement rate reduction for family planning services rendered by a physician shall be adjusted to 3.4 percent of the rates in effect on June 30, 2012.

E. - E.3.a. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2566 (November 2010), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Public Health, LR 39:96 (January 2013), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule may have an adverse impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 in the event that health care assistance is reduced as a result of diminished provider participation.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, May 29, 2013 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Kathy H. Kliebert
Interim Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Professional Services Program Family Planning Services—Reimbursement Rate Reduction

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in estimated state general fund programmatic savings of \$19,600 for FY 12-13, \$22,561 for FY 13-14 and \$24,480 for FY 14-15. It is anticipated that \$328(\$164 SGF and \$164 FED) will be expended in FY 12-13 for the state's

administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.96 percent in FY 13-14. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$39,209 for FY 12-13, \$38,350 for FY 13-14 and \$38,258 for FY 14-15. It is anticipated that \$164 will be expended in FY 12-13 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.96 percent in FY 13-14. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule continues the provisions of the July 1, 2012 and February 20, 2013 emergency rules which amended the provisions governing the reimbursement methodology for family planning services to reduce and adjust the reimbursement rates. It is anticipated that implementation of this proposed rule will reduce programmatic expenditures in the Medicaid Program by approximately \$59,137 for FY 12-13, \$60,911 for FY 13-14 and \$62,738 for FY 14-15.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, it is anticipated that the implementation of this proposed rule may have a negative effect on employment as it will reduce the payments made for family planning services. The reduction in payments may adversely impact the financial standing of providers and could possibly cause a reduction in employment opportunities.

J. Ruth Kennedy
Medicaid Director
1304#085

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Supervisors of Louisiana State University and Agricultural and Mechanical College Office of Procurement Services and Property Management

University Pilot Procurement Code
(LAC 34:XIII.Chapters 3-25)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and R.S. 17:3139.5(5)(c)(i), notice is given that the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College (LSU) proposes to adopt rules comprising the University Pilot Procurement Code as authorized by the Louisiana Granting Resources and Autonomy for Diplomas Act, (LaGrad Act) R.S. 17:3139 et seq., and approvals granted by the Board of Supervisors, Board of Regents and Division of Administration. The adoption and use of a Pilot Procurement Code is one of several autonomies granted by the LaGrad Act for qualifying higher education institutions. Once

approved by the Joint Legislative Committee on the Budget and promulgated, the University Pilot Procurement Code will be used by LSU in place of state procurement law in R.S. 39:15.3, 196 through 200, 1481 through 1526, and 1551 through 1755. The proposed Pilot Procurement Code provides added methods of competition and flexibility in the selection of methods to be used for the procurement of goods and services, establishes competitive thresholds, expands public notice, outlines exceptions to the competitive selection process, sets forth dispute resolution processes, establishes standards for integrity in procurements and provides a broad range of processes and procedures to be followed by LSU and those seeking and doing business with LSU.

Title 34

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

Part XIII. University Pilot Procurement Code

Chapter 3. Purpose, Applicability and Definitions

§301. Purpose and Legislative Authority

A. Goal. It is the goal of the university to procure goods and services in a manner that is open, fair, encourages competition, and affords vendors equal opportunities to compete.

B. Purpose. The purpose of this university pilot procurement code is to establish parameters of a procurement program designed to support and facilitate the instructional, research and public service missions of the university by applying best methods and business practices to the procurement of goods and services and to structure other business arrangements by the university. This university pilot procurement code is intended to promote the development and use of procurement processes which promote the pursuit of excellence and the best interests of the university while maintaining the highest possible integrity, broad based competition, fair and equal treatment of the business community and increased economies and efficiencies for the university.

C. Communication. The university will communicate and collaborate with the Division of Administration, other state colleges and universities and other public entities when mutual benefit can be obtained.

D. Authority. This university pilot procurement code is adopted in compliance with the Louisiana Administrative Procedure Act (R.S. 49:950-999.25) and pursuant to the Louisiana Granting Resources and Autonomy for Diplomats Act (R.S. 17:3139-3139.7.) and administrative approval granted by the Joint Legislative Committee on the Budget.

E. Implementation. Implementation of the university pilot procurement code is subject to university procurement policies which may be adopted by the management board for all universities within its jurisdiction. Prior to final adoption of such university procurement policies, the policies proposed shall be posted on the website of the proposing management board and published in the Louisiana Register providing notice for a public comment period of no less than 30 days. After consideration of comments received, the management board shall act to adopt or reject the proposed policies, including any changes resulting from comments received, and publish final adoption of the policies on its website and print notice in the Louisiana Register. Amendments to university procurement policies shall also

conform to the publication requirements set forth in this Subsection.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

§303. Applicability

A. Applicability. This university pilot procurement code, together with established management board policies, applies to the acquisition by the university of all goods and services paid with public funds, and shall, as authorized by R.S. 17:3139.5.5.c.i, be used in place of these Louisiana procurement laws: R.S. 39:15.3, R.S. 39:196 through R.S. 39:200, R.S. 39:1481 through R.S. 39:1526, and R.S. 39:1551 through R.S. 39:1755.

B. Revenue Producing Enterprises. This university pilot procurement code also applies to transactions with no expenditure of public funds where university facilities, personnel or services will be utilized for revenue producing enterprises with other individuals or entities that will generate income for the university, consistent with established management board policies.

C. Other Institutions. If other institutions under the same management board as the university choose to utilize procurement personnel and services of the university and are expressly authorized to do so by their management board, procurements for those other institutions shall also be subject to this university pilot procurement code and to the policies for its implementation adopted by its management board.

D. Revocation. If the university's autonomy to use this university pilot procurement code should be revoked by the Board of Regents or the Division of Administration pursuant to R.S. 17:3139.3 or R.S. 17:3139.5.6, the university shall end use of these pilot provisions in keeping with the revocation notice and shall resume procurements pursuant to applicable law.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

§305. Definitions

Aggrieved Party—any person or entity who is aggrieved in connection with a solicitation, award or contract and who otherwise properly has standing to participate in administrative and/or judicial proceedings.

Award—the acceptance of a bid or proposal; the presentation of a purchase agreement or contract to a selected respondent.

Best and Final Offer (BFO)—in a competitive negotiation, the final proposal submitted by a respondent after negotiations have been completed and which contains the respondent's most favorable terms in response to the solicitation.

Chancellor—the chief administrative head of the institution of higher education, whether identified by this or some other title in the university's organization chart.

Chief Financial Officer (CFO)—the most senior university executive responsible for financial controls for the

university, whether identified by this or some other title in the university's organization chart. The CFO has specified responsibilities under this university pilot procurement code.

Chief Procurement Officer (CPO)—as used in this university pilot procurement code is the director of procurement services for the university and does not refer to the chief procurement officer for the State of Louisiana.

Competitive Negotiation—a step toward a contract involving back and forth communication regarding costs and other criteria between the evaluation team and respondents who have been found suitable for award of a contract pursuant to evaluation of responses to a solicitation.

Competitive Reverse Auction (CRA)—a competitive online solicitation process conducted for goods and/or services in which respondents compete against each other online, in real time, in an open and interactive environment.

Contract—all types of university agreements, including but not limited to purchase orders, for the procurement or disposal of goods and services and the generation of revenue for the university by the use of university facilities, personnel or services; "contract" shall not include:

1. contracts or appointments for employment;
2. licensing of university's intellectual property specially regulated by the management board;
3. cooperative endeavor agreements.

Contract Controversy—a disagreement that may arise between the university and a contractor regarding the interpretation, application or breach of contract terms. This includes, without limitation, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

Contractor—any individual or entity having a contract with the university.

Cooperative Buying Organization (CBO)—a public or private not-for-profit organization that offers goods or services to subscribing public or private procurement units from vendors located in the United States who have agreed to uniform terms, conditions and pricing in accordance with an agreement entered by the participants pursuant to a competitive award process.

Emergency Procurement—a purchase made after a written determination by the CPO that:

1. there exists an emergency condition which creates a threat to public health, welfare, safety, or public property, or conservation of public resources;
2. the emergency condition creates an immediate and serious need for goods or services that cannot be met through normal procurement methods;
3. the lack of these goods and services would threaten the preservation, conservation, or protection of property or public resources, or the health and safety of any person.

Evaluation Team—a group of at least three individuals designated to conduct interviews and negotiations during the evaluation of responses to a solicitation. The team members may be requested to provide scores for solicitations reviewed.

Fixed Price Items—goods or services purchased where price is fixed by law or regulation.

General Services Administration (GSA) Contract Schedules—long-term government-wide contracts awarded by the U.S. General Services Administration to commercial entities to provide government procurement access to a

broad spectrum of commercial goods and services at volume discount pricing.

Goods—all property, including but not limited to, equipment, materials, supplies, insurance, license agreements for software and leases on real property excluding a permanent interest in land, all consistent with established management board policies. Goods are not services.

Intergovernmental or Interagency Contracts—contracts or agreements in which each of the parties is a governmental entity or between subdivisions or institutions under their jurisdiction.

Invitation to Bid (ITB)—all documents, whether attached or incorporated by reference, utilized for soliciting bids to provide goods or services in accordance with this university pilot procurement code and university procurement policies.

Items for Resale—goods purchased by the university for retail sale to students, employees or the public.

Lease of Facilities—contracts for the lease or rental of space for housing university operations shall be made in the name of the management board and require the authorization of the management board. A lease or rental of more than 5,000 square feet in a privately owned building shall be awarded by use of an ITB or RFP as determined by procurement policies and approved by the CPO and the management board. Amendment of a lease of facilities shall be made only after approval by the management board and pursuant to procurement policies.

Management Board—the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, and such other higher education management boards that have within their systems an institution that qualifies for high level autonomies under R.S. 17:3139.5.5.c.i.

Multi-Step Bids or Proposals—a method of source selection involving two competitive steps, combining the elements of both competitive sealed bids and competitive sealed proposals. The first step may require the submission of technical and price proposals with only the technical proposal being evaluated and scored. The second step involves the consideration of price proposals of those firms that have achieved the highest technical scores.

Negotiation—conferring, discussing, or bargaining to reach agreement in business transactions on a potential procurement.

Office of State Purchasing Contracts—contracts entered into by the Louisiana Office of State Purchasing and made available to other Louisiana procurement units.

Procurement—the process by which the ownership or use of goods or services is acquired. Also includes all functions that pertain to the obtaining of goods and services, including but not limited to description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Procurement Policies—policies adopted pursuant to LAC 34: XIII. Chapter 3, consistent with established management board policies, to implement the procurement process. Such policies shall describe requirements for selection and solicitation of sources, preparation and award of contracts and all phases of contract administration. Procurement policies may also address all other issues related to procurement and to revenue generating contracts.

Professional Services—work rendered by an independent contractor who has a professed knowledge of a particular aspect of learning or science and its practical application. A profession is a vocation founded on advanced specialized study and training which enables its practitioner to provide particular services.

Proprietary Specifications—a specification that cites brand name, model number, or some other designation that identifies a specific product to be offered exclusive of others.

Protest—a written objection by a potential aggrieved party to a solicitation or award of contract, with the intention of receiving a remedial result. Protests must be filed in accordance with this UPPC and procurement policies within specified timelines.

Public Funds—legislatively appropriated funds, interagency transfers, self-generated funds, gifts and funds received by the university by grant or other method from governmental or private sources and which may be used to advance the missions of the university.

Request for Proposals (RFP)—an official solicitation for proposals to supply services or a combination of services and goods where weighted criteria are the basis for award. An RFP may also be used for a solicitation for lease of facilities.

Request for Quotation (RFQ)—a purchasing method for use in procurements that includes a description of the goods or services specified and requests that a potential vendor respond with price and other information by a designated time and date. Evaluation and recommendation for award are based on the quotation which offers the best price, quality, delivery and services from a respondent with a satisfactory record for performance and reliability.

Respondent—an individual or entity that submits a response to a solicitation.

Responsible Respondent—a business entity or individual determined to be fully capable of meeting all requirements of the solicitation and subsequent contract and which has the personnel, financial and technical resources to perform as will be contractually required. A responsible respondent must be able to fully document in advance the ability to provide good faith performance.

Responsive Respondent—an individual or business entity that has submitted a bid/proposal/offer that fully conforms in all material respects to the requirements of the solicitation.

Services—the furnishing of labor, time or effort by a vendor which may involve, to a lesser degree, the delivery or supply of a product, incidental to the required performance.

Sole Source Procurement—a purchase made when the CPO determines in writing that there is only one source for a good or service. Sole source procurement may be utilized when only one vendor or supplier has the unique ability to meet the requirements of the procurement.

Solicitation—an ITB, RFP, RFQ, SFO an electronic posting, document or any other communication used to obtain responses for the purpose of entering into a contract.

Solicitation for Offers (SFO)—an official solicitation for a contract that will produce revenue or other significant benefit for the university.

University—Louisiana State University and Agricultural and Mechanical College, located at Baton Rouge and designated as the premier flagship university for the state, an institution of the Louisiana State University System and

under the supervision and management of the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, or such other postsecondary institutions that have qualified for high level autonomy pursuant to La. R.S. 17:3139.5.5.c.i and have adopted this university pilot procurement code with approval of its management board.

University Pilot Procurement Code (UPPC)—the rules adopted pursuant to the authority granted by R.S. 17:3139.5.5.c.i, for use by duly authorized higher education institutions in lieu of state procurement statutes when those institutions procure goods or services or enter other contracts.

Used Equipment—pre-owned or rebuilt/remanufactured /refurbished equipment that may be reconditioned and offered for purchase.

Vendor—a supplier or seller of goods or services.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

§307. Delegation and Revocation of Purchasing

Authority to Departments

A. Supervision. The CPO shall supervise assistants and other personnel as may be necessary for the efficient operation of university procurement.

B. Delegation. For the efficient operation of the university the CPO may delegate, in writing with the approval of the CFO, to university deans, directors, or department heads, or their formally designated agents, authority to procure on behalf of their administrative units in keeping with this UPPC and procurement policies.

C. Revocation. The CPO may change, limit, expand or reverse such delegations at any time.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

Chapter 5. Competitive Solicitations

§501. Types of Competitive Methods

A. Determination. The CPO shall determine the appropriate solicitation methods to be used in procuring goods and services for the university. Among those methods are:

1. invitation to bid (ITB);
2. request for proposals (RFP);
3. request for quotation (RFQ);
4. competitive reverse auction (CRA);
5. best and final offer (BFO);
6. solicitation for offers (SFO);
7. competitive negotiation;
8. cooperative buying organizations (CBO);
9. multi-step bids or proposals.

B. Other procurement methods. Other procurement methods may be utilized where there is a written determination by the CPO and the CFO that it is in the best interest of university to do so.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

§503. Competitive Thresholds

A. Procurements. Single procurements of goods or services utilized within a twelve month period estimated to cost less than \$50,000 shall be made using procedures determined by the CPO. Procurement of goods and services utilized within a 12 month period estimated to cost in excess of \$50,000 shall be made using the competitive methods set forth in LAC 34: XIII.501 unless exempt elsewhere in this UPPC.

B. Information Technology. Single procurements of information technology software (including installation, license, modifications, integration, training, hosted software, software subscriptions, support, etc.) and hardware/software maintenance estimated to cost less than \$100,000 during a 12 month period shall be made using procedures determined by the CPO. Procurement of information technology software and hardware/software maintenance estimated to cost in excess of \$100,000 during a 12 month period shall be made using the competitive methods set forth in LAC 34: XIII.501 unless exempt elsewhere in this UPPC.

C. Professional Services. Procurements of professional services shall be made using procedures determined by the CPO. These include services that are rendered by an independent contractor who has a professed knowledge of some department of learning or science used in practical applications to the affairs of others or in the practice of an art founded on it, which independent contractors shall include and not be limited to lawyers, doctors, dentists, psychologists, advance practice nurses, veterinarians, architects, engineers, land surveyors, landscape architects, accountants, actuaries, claims adjusters, pharmacists, visiting professors and scientists.

D. Specialty Services by Individuals. Procurement of services rendered by individuals which require the use of graphic artists, sculptors, musicians, entertainers, photographers, and writers or which require the use of highly technical or unique individual skills or talents, such as, but not limited to, paramedics, therapists, handwriting analysts, foreign representatives, expert speakers, trainers within a continuing education program and expert witnesses for adjudications or other court proceedings shall be made using procedures determined by the CPO.

E. Social Services. Procurement of social services that are rendered by a person or private or governmental entity, in the furtherance of the general welfare of the citizens of Louisiana, including but not limited to rehabilitation and health support, habilitation and socialization, protection of adults and children, improvement of living conditions and health, and evaluation, testing and remedial educational services utilized within a 12 month period and estimated to cost less than \$150,000 shall be made using procedures determined by the CPO. Procurement of social services estimated to cost in excess of \$150,000 within a 12 month period shall be made utilizing the competitive methods set forth in LAC 34:XIII.501 unless exempt elsewhere in this UPPC.

F. Artificial Division. Under no circumstances may a procurement requirement be artificially divided so as to

avoid the application of competitive thresholds under this section.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

§505. Procurement of Insurance and Related Services

A. Contracts for Insurance. Contracts entered into by the university for the purchase of insurance or for obtaining services related to the operation of an insurance program shall be awarded in accordance with the provisions of this UPPC. Determination of the appropriate competitive method shall be made by the CPO with the written concurrence of the university risk manager.

B. Multi-Step Bids or Proposals. In addition to a simple ITB or RFP, a variation of multi-step bids or proposals or any combination of competitive methods may be used to select insurance brokers and to obtain appropriate insurance coverage.

C. System-Wide Programs of Self-Insurance. Unless specifically authorized in advance, in writing, by the chief executive officer or president for the university system governed by the management board, the provisions of this section shall not apply to any procurement related to any system-wide program of self-insurance or any other system-wide insurance or other employment benefit related programs.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

§507. Specifications

A. Nonrestrictive Specifications. Specifications shall be developed in a manner which is most likely to result in the broadest possible competition while securing quality goods and services which meet the needs and expectations of the university.

B. Proprietary Specifications. Proprietary specifications may be used only pursuant to procurement policies and with the written approval of the CPO upon a determination that such use is in the best interest of the university.

C. Bid or Performance Guaranty. Solicitations may include requirements for bid and/or performance guaranty, which requirements shall not be waived.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

§509. Addenda Modifying Solicitations

A. Modifications to ITB or RFP. An addendum modifying an ITB or RFP shall not be issued during the 72 hours excluding Saturdays, Sundays, and postal holidays preceding the response submission deadline unless the time for submitting responses is extended for at least one week.

B. Modifications to RFQ. An addendum modifying a RFQ shall not be issued during the 24 hours excluding Saturdays, Sundays, and postal holidays preceding the

response submission deadline unless the time for submitting Responses is extended for at least 24 hours.

C. Distribution of Addendum. Addendum(s) shall be sent to all prospective respondents known to have received a solicitation.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

§511. Public Notice for Procurements; Submission Deadline

A. Public Notification. Public notification of solicitations for bids/proposals/offers/auctions/quotations shall be made through a centralized electronic interactive environment administered by the Division of Administration and/or the university. The notice for each solicitation shall contain the name, address, email address and telephone number of the university contact person from whom detailed information may be obtained, shall describe the goods or services sought, and shall designate the forms to be used and the date, time and place for the receipt of bids/proposals/offers/auctions/quotations.

B. Time for Reasonable Notification. Notification of a solicitation shall allow a reasonable time as established by the management board procurement policies for responses given the nature and complexity of the solicitation. Notification of solicitations may also be made by posting on electronic bulletin boards, publication in appropriate newspapers and trade journals, email and postal notices to potential vendors, and by other means determined by the CPO.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

§513. Receipt and Recording of Responses

A. Receipt of Solicitation Response. Responses to solicitations shall be received in the manner specified including receipt by mail, direct delivery, or through any secure electronic interactive environment permitted pursuant to the Louisiana Uniform Electronic Transaction Act.

B. Designated Place of Response. A response received at the designated place after the submission deadline shall not be considered whether delayed in transmission or for any cause whatsoever. In no case will late responses be considered.

C. Response Time. Responses to solicitations must be received at the time and place and in the format prescribed in the solicitation.

D. Delay of Response. If a receipt of a response is delayed by action of the university and this delay prejudices a respondent, the university shall cancel and reissue the solicitation.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

§515. Mistakes in Responses

A. Errors in Responses. Patent errors in responses to solicitations supported by clear and convincing evidence may be corrected by the university or may be withdrawn, if such correction or withdrawal does not prejudice other respondents and such actions may be taken only to the extent permitted under procurement policies. A request to withdraw a response to a solicitation after the submission deadline must be made within three days excluding Saturdays, Sundays and postal holidays and supported with written explanation. If it is determined that the error is patently obvious, then the response to the solicitation may be withdrawn and if a guaranty was submitted it shall be returned to the respondent.

B. Minor Informalities. Minor informalities are a matter of form rather than substance which are evident from the solicitation documents or insignificant mistakes that can be waived or corrected without prejudice to other respondents. The CPO may waive such informalities or allow the respondent to correct them depending on which is in the best interest of the university.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

§517. Cancellation of Solicitations

A. Cancellation of Solicitation. A solicitation may be cancelled, prior to execution of a contract, by the CPO pursuant to procurement policies at any time when it is deemed in the best interest of the university.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

§519. Withdrawal of Bids or Proposals

A. Withdrawal of Bid or Proposal. A bid or proposal which contains a patently obvious, unintentional and substantial mechanical, clerical or mathematical error or unintentionally omits a substantial quantity of goods or services called for in the solicitation may be withdrawn by the respondent if clear and convincing sworn, written evidence of such error or omission is furnished to the university prior to award.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

§521. Exceptions to the Competitive Solicitation Process

A. Exceptions. The exceptions to the competitive solicitation processes are the following:

1. equipment or vehicle repairs and repair parts from an authorized dealer or original equipment manufacturer; an authorized Louisiana dealer shall be used if available;
2. equipment moves by the original equipment manufacturer or authorized dealer to ensure equipment

operation to original equipment manufacturer specifications, calibration, warranty, etc.;

3. vehicle body repairs covered by insurance recovery and in accordance with insurance requirements;

4. livestock procured at public auction;

5. livestock sperm and ova;

6. working class animals trained to perform special tasks, including, but not limited to, narcotics detection, bomb detection, arson investigation and rescue techniques;

7. publications and/or copyrighted materials procured directly from the publisher or copyright holder;

8. publications and/or copyrighted materials procured by libraries or text rental stores from either subscription services or wholesale dealers which distribute for publishers and/or copyright holders;

9. publications of articles, manuscripts, etc. in professional scientific, research, or educational journals/media and/or the procurement of reprints;

10. royalties and license fees for use rights to intellectual property, such as, but not limited to: patents, trademarks, service marks, copyrights, music, artistic works, trade secrets, industrial designs, domain names, etc.;

11. public utilities and services provided by local governments;

12. prosthetic devices, implantable devices and devices for physical restoration;

13. educational training and related resources (except equipment) used to enhance the performance of university employees and good standing of state agencies, including memberships in and accreditations by professional societies and organizations;

14. materials, supplies, exhibitor fees and exhibit booths for conferences, seminars and workshops or similar events (business, educational, promotional activities) which enhance economic development or further the university's mission, duties and/or functions, with the approval of the CPO or equivalent;

15. food, material and supplies for teaching and training where procuring, preparing and serving of food are part of the prescribed course;

16. shipping charges and associated overseas screening and broker fees between international and domestic origins and destinations;

17. parcel services, including but not limited to Federal Express, United Parcel services, Airborne Express and Express Mail;

18. renewal of termite service contracts;

19. advertising, where permitted by law or after the university CPO certifies that specific media is required to reach target audiences;

20. scientific and laboratory supplies, equipment and services when procured by the university for laboratory, educational or scientific research not to exceed \$50,000 per transaction;

21. procurement or rental of mailing lists;

22. art exhibitions, rentals and/or loan agreements and associated costs of curatorial fees, transportation and installation;

23. web based or hosted subscription services;

24. instructors for continuing education courses taught on an as-needed basis;

25. procurement of services from subcontractors named in federal, state and private grants when the grant award is received in which a portion of the services is subcontracted. Procurements conducted by the university shall be made in accordance with all federal requirements necessary for the receipt and use of such federal funds, particularly with regard to competitive bidding requirements;

26. services paid for with federal funds provided specifically for such purposes;

27. used equipment, demonstrator equipment and antique procurements;

28. other sole source procurements;

29. Office of State Purchasing contracts or master agreements;

30. procurements from GSA contract schedules;

31. intergovernmental or interagency contracts;

32. procurement of professional services;

33. procurement of items for resale;

34. fixed price items.

B. Emergency Procurements. Emergency procurements shall be made using the most competitive process available consistent with the need for responding to the emergency. Reasonable efforts under the circumstances shall be made to obtain quotations from three or more vendors when goods or services are to be purchased on an emergency basis, except for standard equipment parts for which prices are established. When goods or services are urgently required and time does not permit the obtaining of written quotations, the CPO may obtain quotations by telephoning or otherwise. Emergency procurement shall be limited to only those goods and services necessary to meet the emergency.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

Chapter 7. Veterans and Small Entrepreneurships

§701. Initiatives for Veterans and Small Entrepreneurships

A. Hudson and Veterans Initiatives. Procurement policies shall establish the means for implementation of the Hudson and Veterans' initiatives as required by R.S. 39:2001-2008 and R.S. 39:2171-2179 respectively.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

Chapter 9. Revenue Generating Solicitations and Contracts

§901. Revenue Generating Procedures

A. Procedures. Contracts or franchises by the university which will generate income or other significant benefit for the university and which will result in an exclusive right for the contracting party to provide goods or services, using university facilities, personnel or services shall be awarded by the use of an open competitive process which is approved by the CPO and the CFO and consistent with management board policies. Such competitive process shall allow reasonable time for potential respondents to prepare

responses given the nature and complexity of the responses solicited.

B. Exception to Competition. When it is determined by the CPO, with the written concurrence of the CFO, consistent with established management board policies, that circumstances support the award of a revenue generating contract without competition, such a contract may be entered.

C. Cost Recovery. Contracts by which services produced by the university are made available to entities outside the university need not be competitively awarded but shall be made on a basis that assures the recovery of costs associated with providing those services and a reasonable return to the university. Such contracts shall be structured in a manner which enhances opportunities for instruction, research, public service and other objectives of the university.

D. Exceptions. This section shall not apply to the licensing of intellectual property specifically regulated by the management board or to cooperative endeavor agreements.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

Chapter 11. Contracts with University or State Employees

§1103. Contracts with University or State Employees

A. Faculty of Other Universities. Contracts between the issuing university and a faculty member of any other university shall be subject to the policies and procedures promulgated by each respective university and the management boards having authority over the respective institution of higher education where the faculty member is employed. Such agreement shall be subject to the written approval of the chancellor of the university which employs the faculty member, and written notification of the agreement and approval shall be provided to the appropriate management board.

B. Faculty or Staff of the University. Contracts between university and any of its own employees, or between university and any other employee of the State of Louisiana or any of its political subdivisions, shall be consistent with the Louisiana Code of Governmental Ethics, the Code of Ethics for procurement as defined in LAC 34:XIII.Chapter 23, Civil Service rules, other applicable laws and regulations, and established management board policies.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

Chapter 13. Evaluation and Award of Competitive Solicitations

§1302. Evaluation and Award

A. Responses. Responses to solicitations shall be evaluated in keeping with the criteria, specifications, terms and conditions set forth in the solicitation and as detailed in procurement policies.

B. Lowest Cost. Unless otherwise specified in the solicitation or in procurement policies, an award based on an

ITB shall be to the responsible respondent whose bid is responsive to the terms, conditions and specifications and which offers the lowest cost to the university.

C. Highest Score. An award based upon a RFP shall be to the responsible respondent whose proposal was scored highest by an evaluation team based on the weighted criteria set forth in the RFP after completion of all steps of the evaluation process set forth in the RFP, taking into consideration price and the evaluation factors set forth in the RFP.

D. Greatest Return. The award based on a SFO which results in an exclusive right or franchise for the use of university facilities or services shall be made to the respondent that meets the terms and conditions of the solicitation and offers the greatest return to the university.

E. Other Processes. Procurement policies shall establish evaluation processes for other competitive methods of procurement.

F. Notice. Written notice of the award of a contract shall be provided to all respondents requesting such notice and shall be made a part of the procurement file.

G. Tie Bids. Tie bids occur when responsive bids from responsible respondents are identical in price and meet all requirements and criteria set forth in the solicitation and are susceptible of award. When there is a tie between an out-of-state and Louisiana respondent, preference will be given to the Louisiana respondent. The CPO shall make an award when tie bids are received in any manner that will discourage tie bids. A written determination justifying the manner of award must be made. Tie bids of greater than \$10,000 shall be reported to the Louisiana Attorney General's Office.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

§1305. Right to Reject

A. Rejection. The university reserves the right to reject any or all responses to a solicitation in whole or in part and to award by items, parts of items or by any group of items specified. Also, the right is reserved to waive any technical defects when the best interest of the university will be served.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

Chapter 15. Disputes and Contract Controversies

§1503. Dispute Resolution

A. Authority of CPO. The CPO is authorized to resolve, in accordance with approved procurement policies, protests and contract controversies. Detailed requirements regarding calculation of deadline dates, methods of transmitting protests and contract controversies, and similar administrative matters shall be set forth in procurement policies.

B. Protests

1. All protests to a solicitation shall be filed with the CPO no later than three days, excluding Saturdays, Sundays

and postal holidays, prior to the response submission deadline. All protests to the award of a contract shall be filed with the CPO no later than seven calendar days after the issuance of the notification of award.

2. The CPO shall render a written decision regarding a protest within 14 calendar days after receipt of the protest and any subsequently submitted information. A written decision shall be furnished to the aggrieved party and other interested parties in accordance with procurement policies.

3. In the event of a timely protest relating to a solicitation or the award of a contract, university shall not proceed with the solicitation or the award of a contract unless the CPO makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the university.

C. Contract Controversies

1. All contract controversies shall be filed with the CPO no later than seven calendar days after either the termination of the contract or the event giving rise to the controversy, whichever is later.

2. The CPO shall render a written decision regarding a contract controversy within seven calendar days after all parties to the controversy have had a reasonable opportunity to state in writing their position on the issues involved and their responses to the positions of other parties to the controversy. A written decision shall be furnished to the contractor in accordance with procurement policies.

D. Hearing. If the CPO determines that the issues involved in a protest or contract controversy are complex, obscure or would best be evaluated based on the testimony of the parties or others, the CPO may extend the relevant time periods or call for a hearing at which evidence may be received, a record created and a decision rendered by an independent hearing officer designated by the CFO. All interested parties shall be allowed to fully participate in such a hearing.

E. Decision of CPO. A decision of the CPO or a designated hearing officer regarding a protest or a contract controversy is final and conclusive except when:

1. the decision is fraudulent; or
2. the person or entity adversely affected has timely appealed as provided in this section.

F. Appeal. Any person or entity adversely affected by the decision of the CPO or hearing officer regarding a protest or a contract controversy may appeal the decision to the CFO within seven calendar days of receipt of the written decision. Review by the CFO of the decision of the CPO or hearing officer shall be based on documents submitted by the CPO and the person or entity adversely affected by the decision or, if a hearing was conducted, upon the record created from the hearing.

G. Review by Chancellor. The decision of the CFO regarding an appeal brought under LAC 34: XIII.1503.F may be appealed to the chancellor within seven days after receipt of the decision of the CFO. The decision of the chancellor shall constitute the final administrative determination regarding the protest or contract controversy.

H. University Appeal. In exceptional circumstances as determined in writing by the CPO, the university may appeal the decision of a hearing officer to the chief executive officer or president for the university system governed by the management board within seven calendar days of receipt of

the written decision. In such cases, the decision of the chief executive officer or president shall constitute the final administrative determination regarding the protest or contract controversy.

I. Judicial Review. Any person or entity adversely affected by the final administrative determination regarding a protest or contract controversy may seek judicial review of the administrative determination in the Nineteenth Judicial District Court in East Baton Rouge Parish, which review shall be based on the record compiled at the administrative level.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

§1507. Damages

A. Protest Damages. The CPO, his designee, any hearing officer, and any court properly hearing any matter arising out of any protest may award damages to the aggrieved party when the protest brought by such aggrieved party is sustained and the aggrieved party should have been awarded the contract but was not. Such damages shall be limited exclusively to reasonable costs incurred in connection with the solicitation, including bid preparation costs other than attorney's fees.

B. Contract Damages. The CPO, his designee, any hearing officer, and any court properly hearing any matter arising out of any contract controversy may award damages to the contractor when the contract controversy brought by such contractor is sustained. Such damages shall be limited exclusively to the actual expenses reasonably incurred in performance of the contract.

C. Administrative Costs. Any administrative determination of costs or expenses recoverable pursuant to this section shall be final, subject to the discretionary review of the management board.

D. Limitations. In no event shall damages awarded by the CPO, his designee, any hearing officer, the chief executive officer or president of the university, or any court include attorney fees or any incidental, indirect, special, or consequential damages, including but not limited to loss of use, revenue or profit, whether reasonably certain or not.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

Chapter 17. Judicial Review of Administrative Determinations

§1702. Venue for Actions by or against the University in Connection with Procurement

A. Solicitation and Award of Contracts. The Nineteenth Judicial District Court shall have exclusive venue over an action between the university and a bidder, offeror, or contractor, prospective or actual, to determine whether a solicitation or award of a contract is in accordance with the constitution, statutes, regulations, and the terms and conditions of the solicitation. Such actions shall extend to all kinds of actions, whether for monetary damages or for declaratory, injunctive, or other equitable relief.

B. Debarment or Suspension. The Nineteenth Judicial District Court shall have exclusive venue over an action between the university and a person who is subject to suspension or debarment proceedings, to determine whether the debarment or suspension is in accordance with the constitution, statutes, and regulations. Such actions shall extend to actions for declaratory, injunctive, or other equitable relief.

C. Actions under Contracts or for Breach of Contract. The Nineteenth Judicial District Court shall have exclusive venue over an action between the university and a contractor who contracts with the university, for any cause of action which arises under or by virtue of the contract, whether the action is on the contract or for a breach of the contract or whether the action is for declaratory, injunctive, or other equitable relief.

D. Finality for Administrative Determinations. In any judicial action under this section, factual or legal determinations by employees, agents, or other persons appointed by the university shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious or contrary to law. Administrative decisions will be made pursuant to LAC 34:XIII.Chapter 15 and LAC 34:XIII.Chapter 21 unless the decision is fraudulent or the person or entity adversely affected by the decision has timely appealed administratively or judicially.

E. Writs or appeals; district court decisions. Any party aggrieved by a final judgment or interlocutory order or ruling of the Nineteenth Judicial District Court may appeal or seek review thereof, as the case may be, to the Court of Appeal, First Circuit, or the Supreme Court of Louisiana, as otherwise permitted in civil cases by law and the constitution.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

Chapter 19. Contracts

§1902. Contract Clauses; Administration

A. Required Contract Clauses. Clauses providing for the following requirements shall be included in all contracts, except upon a written determination by the CPO, approved in writing by the CFO that the interests of university are best served by omitting the clause. Procurement policies may set forth the language to be used for such clauses:

1. termination of the contract for default;
2. the right to audit records related to the procurement;
3. the right to suspend or terminate a contract based on the absence of budgeted funds for the acquisition of goods or services;
4. prohibiting illegal discrimination by the contractor;
5. requiring that Louisiana law shall apply to all disputes, and that venue for any actions brought against university arising out of the contract shall be only in the Nineteenth Judicial District Court in East Baton Rouge Parish.

B. Additional Contract Clauses. Procurement policies may permit or require the inclusion in university contracts of clauses providing for appropriate remedies and covering the following subjects:

1. liquidated damages as appropriate;
2. specified reasons for delay or nonperformance;
3. termination of the contract in whole or in part for the convenience of the university;
4. bid specifications may contemplate a fixed escalation or de-escalation in cost in accordance with the United States Bureau of Labor Statistics, Consumer Price Index, Wholesale Price Index or other indexes generally recognized for the goods being sought;
5. for cost reimbursement-based contracts, an itemized budget;
6. a description of reports or other deliverables to be received, when applicable;
7. a schedule when reports or other deliverables are to be received, when applicable;
8. responsibility for payment of taxes, when applicable;
9. assignability of the contract or rights to payments under the contract;
10. indemnification.

C. Contract Clauses Authorized by Policy. Procurement policies may permit or require the inclusion of clauses providing for appropriate equitable adjustments in prices, time for performance, or other contract provisions covering these issues:

1. the unilateral right of the university to order changes in the work within the general scope of the contract in any one or more of the following:
 - a. drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the state in accordance therewith;
 - b. method of shipment or packing; or
 - c. place of delivery.
2. the unilateral right of the university to require suspension of work or delay of performance;
3. variations between estimated quantities of work in a contract and actual quantities;
4. performance measurements and monitoring plan.

D. Rights in Writing. Invocation by the university of rights granted by such clauses shall be in writing provided to the contractor.

E. Quantities. Unless specified in the solicitation as an absolute quantity, the university may increase or decrease the quantity of any goods or services in the contract by 10 percent.

F. Subsequent Award. In the event any contractor fails to fulfill or comply with the terms of any contract, the CPO may award the contract to the next lowest responsible respondent to the solicitation which resulted in the contract, subject to acceptance by that respondent, and may hold the defaulting contractor responsible for the difference in cost.

G. Late Payment Required. If the university without reasonable cause fails to make any payment due within 90 days of the due date prescribed by a contract for goods or services, the university shall pay, in addition to the amount due, interest on the amount due at the rate established pursuant to R.S. 13:4202.B for the applicable time period, from the ninety-first day after the due date prescribed by the contract.

H. Documentation. If it is determined by the university that additional evidence of the validity of a claim for payment is required, such evidence shall be requested within

10 days, excluding Saturdays, Sundays and postal holidays from the receipt of the bill. In instances where additional evidence is required, the bill shall be reviewed and payment or rejection made within 30 days from receipt of the evidence requested by the university.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

§1904. Participation by Respondent Constitutes Consent

A. Express Consent. Participation by a respondent in any procurement process governed by this UPPC shall constitute express consent to the procedures, limitations, and other terms and conditions contained in this UPPC, procurement policies and the solicitation.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

§1906. Multiyear contracts

A. Term. Except as otherwise provided in this section, no contract for goods or services may be entered into for periods of more than five years. Payment and performance obligations for fiscal years after the initial year shall be subject to the availability and appropriation of funds therefor. No contract shall be entered into for more than one year unless the length of the contract was clearly stated in the specifications included in the solicitation. With respect to all multiyear contracts, there shall be no provisions for a penalty to the university for the cancellation or early payment of the contract.

B. Grants or Joint Agreements. Contracts or amendments to existing contracts issued under the authority of grants or joint agreements between the Board of Regents and federal agencies for research, educational, or infrastructure development activities, and contracts or amendments to existing contracts issued by university under the authority of grants or joint agreements issued by federal agencies or private grants, may be entered into for a period corresponding to the performance period of the grant or agreement.

C. Specific Grants. Contracts or amendments to existing contracts issued under the authority of the Board of Regents to award grants for educational and research purposes with funds available from the Louisiana Quality Education Support Fund, the Louisiana Fund, and the Health Excellence Fund, may be entered into for periods of not more than six years. However, such contracts may be extended beyond the six-year limit up to an additional two years provided no additional costs are incurred.

D. Gifts. A nonexclusive contract with a vendor who has made a gift to the university of equipment utilized for promoting products and university activities at a cost to the vendor in excess of \$50,000, and which covers products for resale within the institution, may be entered into for a period not to exceed 10 years.

E. Term of Revenue Generating Contracts. Nothing in this section shall limit the term of revenue generating contracts.

F. Exceptions. Notwithstanding the limitations set forth in this section, contracts of any type may be entered into for a longer term upon the express authorization of the management board, based on the written recommendation of the CPO and the chancellor that:

1. estimated, requirements cover the period of the contract and are reasonably firm and continuing; and

2. such a contract will serve the best interests of the university by encouraging effective competition or otherwise promoting economies in university procurement, which recommendation shall also state the estimated savings to be obtained by entering into a multiyear contract.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

Chapter 21. Respondent and Contractor Relations

§2103. Contractor Communications

A. Registry. The university shall maintain a registry of persons and entities interested in doing business with the university and may also include potential respondents from other sources.

B. Product Demonstrations. Potential respondents seeking to provide product demonstrations, presentations or exhibits to university personnel shall first request authorization to do so in writing to the CPO.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

§2105. Suspension Pending Debarment Investigation

A. Suspension. The CPO may issue a written determination to suspend a person or entity from doing business with the university pending an investigation to determine whether cause exists for debarment pursuant to procurement policies.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

§2107. Debarment

A. Causes. A person or entity may be debarred from further participation in contracts with the university on any of the following grounds:

1. conviction of the person or entity, or any of its officers, directors, principals, or key employees, of a criminal offense related to obtaining or attempting to obtain a contract with the university or the performance of a contract with the university;

2. conviction of the person or entity, or any of its officers, directors, principals, or key employees, of a criminal offense related to fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, or

receiving stolen property, or any other offense involving moral turpitude;

3. conviction, or a civil finding of liability, of the person or entity or any of its officers, directors, principals, or key employees, of an offense under antitrust statutes of the United States, Louisiana, or any other state, for activities arising out of the submission of bids or proposals;

4. failure to perform in accordance with the terms of one or more contracts following notice of such failure, or a repeated failure to perform or of unsatisfactory performance of one or more contracts;

5. the person or entity is currently under debarment by any other government entity based upon a settlement, agreement or a final administrative or judicial determination issued by a federal, state or local governmental entity.

B. Hearing. When the CPO determines that a person or entity may have engaged in activities which are cause for debarment, a hearing shall be conducted by an independent hearing officer, designated by the CFO, in which evidence is received and a record created. The hearing officer shall issue a decision, including findings of fact and conclusions, based on the evidence produced in the hearing.

C. Effect. If the decision is to debar, the decision shall state the debarment period and inform the person or entity that no person representing the debarred person or entity during the debarment period may conduct business with the university and that any response to a solicitation received from the debarred person or entity during the debarment period will not be considered.

D. Administrative Review. A decision by the hearing officer to debar a person or entity may be appealed to the CFO within seven calendar days of receipt of the written decision on debarment. The CFO's review shall be based on the record created from the hearing.

E. Appeal. The decision of the CFO may be appealed within seven days after receipt of the decision of the CFO to the chancellor. The decision of the chancellor shall constitute the final administrative determination regarding the debarment. The person or entity debarred may seek judicial review of the administrative determination in pursuant to the provisions of LAC 34: XIII. Chapter 15, which review shall be based on the record compiled at the administrative level.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

Chapter 23. Ethics

§2303. Integrity in Procurements

A. Code of Ethics and Ex Parte Communications. All parties involved in the procurement process, contract administration or contract performance are bound to act responsibly, fairly and in good faith. Any person acting for the university in the procurement process shall be held to the highest degree of integrity, honesty and trust and shall be bound by the Louisiana Code of Governmental Ethics, R.S. 49:1101 and the Code of Ethics for procurement which are in addition to applicable state laws, as follows.

1. Give first consideration to the mission and policies of the university and the laws of the State of Louisiana.

2. Strive to obtain maximum value for each dollar spent.

3. Decline all personal gifts or gratuities.

4. Grant equal consideration to all competitive suppliers.

5. Believe in the dignity and worth of the service rendered by the procurement Office, and the responsibilities assumed as trusted public servants.

6. Conduct business with potential and current suppliers in good faith, devoid of intentional misrepresentation.

7. Demand honesty in sales representation whether offered through the medium of a verbal, electronic or written statement, an advertisement, or a sample of the product.

8. Receive the consent of originators of proprietary ideas and designs before using them for competitive purchasing purposes.

9. Make every reasonable effort to negotiate an equitable and mutually agreeable settlement of any controversy with a supplier; and/or be willing to resolve major controversies, pursuant to the established policies of the university.

10. Accord a prompt and courteous reception to all who call on legitimate business missions.

11. Cooperate with trade, industrial and professional associations, and with governmental and private agencies for the purposes of promoting and developing sound business methods.

12. Foster fair, ethical and legal trade practices.

13. Identify and eliminate participation of any individual in operational situations where a conflict of interest may be involved.

14. Resist encroachment on control of personnel in order to preserve integrity as procurement professional. Seek or dispense no personal favors.

15. Handle each procurement problem objectively and empathetically, without discrimination.

16. Support the professional aims and objectives of the National Institute of Governmental Purchasing, Inc. and the National Association of Educational Procurement.

B. Procurement policies shall provide for restrictions on ex parte communications which are appropriate to the circumstances.

C. Conflicts of Interest. In addition to the limitations of Paragraph A of this section, If the CPO has reason to believe that a conflict of interest may exist for university procurement or contract administration personnel, the CPO shall direct the parties involved to take appropriate steps to eliminate an actual, perceived, or potential conflict of interest and shall monitor compliance with these steps.

D. Collusion. When collusion is suspected among respondents to a solicitation, a written notice of the relevant facts shall be transmitted to the district attorney for the parish in which university is domiciled, the attorney general and the inspector general for investigation. All documents involved in any procurement in which collusion is suspected shall be retained for a minimum of six years or until the district attorney for the parish in which university is domiciled, the attorney general and inspector general give written notice that they may be destroyed, whichever period

is longer. All retained documents shall be made available to the district attorney for the parish in which university is domiciled, the attorney general and inspector general or their designees upon request.

E. Limitations on Consultants Competing for Contracts. Any person or entity, and any parent or subsidiary business entity of any entity contracting with university for the purposes of developing an ITB, RFP, or any other type of solicitation related to a specific procurement shall be prohibited from bidding, proposing, or otherwise competing for award of that procurement. Such persons or entities shall also be prohibited from participating as subcontractors related to performance of a contract resulting from that procurement. For purposes of this Section, the following activities shall not be considered developing an ITB, RFP, or any other type of solicitation:

1. architectural and engineering programming;
2. master planning;
3. budgeting;
4. feasibility analysis;
5. constructability review;
6. furnishing specification data or other product information;
7. any other services that do not establish selection qualifications or evaluation criteria for the procurement of an architect or engineer.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

Chapter 25. Management Board Authority

§2503. Management Board Policies Not Superseded

A. Special Policies and Provisions of Management Board. Nothing in this UPPC shall abridge any policies and provisions established by a management board, through its bylaws, regulations.

AUTHORITY NOTE: Promulgated In accordance with R.S. 17:3139.5.5.c.i.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Office of Procurement Services and Property Management, LR 39:

Family Impact Statement

The provisions of this proposed Rule will have no known impact on family formation, stability or autonomy as described in R.S. 49:972.

Poverty Impact Statement

The provisions of this proposed Rule will have no known impact on child, individual or community asset development, as described in R.S. 49:973.

Public Comments

Interested parties may contact Marie Frank, MPA, CPPB, Executive Director of Procurement Services and Property Management for LSU by email at mfrank@lsu.edu for further information. All interested parties are invited to submit written data, views, comments or arguments related to these proposed rules through June 30, 2013 to the above email address or to 213 Thomas Boyd Hall, LSU, Baton Rouge, LA 70803. No preamble has been prepared for this proposed Rule. Interested parties are urged to review the full

text of the proposed University Pilot Procurement Code, a downloadable version of which is available on the LSU Purchasing Website: www.fas.lsu.edu/purchasing.

Marie C. Frank
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: University Pilot Procurement Code

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Pursuant to Louisiana Revised Statutes 17: 3139.5(5)(c)(i) which allows the implementation of a pilot procurement code, the proposed administrative rules may result in an overall net decrease in university expenditures depending upon the costs associated with implementation and the increased competitiveness of solicitations. The pilot procurement code allows LSU to improve operational efficiency and effectiveness. It reduces the redundancy and inefficiency of multiple levels of bureaucratic reviews and approvals. It provides for multiple solicitation methods chosen specifically to increase competition and the use of cooperative purchasing agreements that have been competitively awarded by not-for-profit cooperative buying organizations. Cooperative purchasing agreements will allow the use of catalogs for small dollar item purchases that can be compared through electronic catalogs thus allowing a second level of competition from dollar 1. Many such purchases are now made at retail prices without competition.

The bids/proposals/offers are expected to result in substantial savings by receiving lower prices through the comparison of prices available in a broader marketplace. Other states that have adopted pilot procurement codes specifically for higher education have realized savings through the establishment of best practices and policies in the area of procurement. While the savings will be difficult to measure depending on the solicitation method, good/service purchased and the strategic decisions resulting from analysis of spending patterns, flagship institutions such as the University of Virginia, Colorado, Kansas and Oregon report success.

We do not anticipate additional personnel or equipment to implement the pilot procurement code.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is no anticipated impact on businesses due to the implementation of the pilot procurement code. The code will continue to award contracts on a competitive basis and all businesses will be encouraged to continue to participate in all solicitation events.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed administrative rules may increase competition among various businesses providing commodities and services to the university. To the extent businesses choose to participate in competitive solicitations, competition will likely increase among those businesses that provide the lowest price for the best goods or services.

Marie C. Frank
Executive Director
1304#034

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections Office of the State Fire Marshal Uniform Construction Code Council

Uniform Construction Code
(LAC 55:VI.301)

In accordance with the provisions of R.S. 40:1730.26 and R.S. 40:1730.28, relative to the authority of the Louisiana State Uniform Construction Code Council (LSUCCC) to promulgate and enforce rules and in accordance with R.S. 49:953(B), the Administrative Procedure Act, the Department of Public Safety and Corrections, Office of the State Fire Marshal, Louisiana State Uniform Construction Code Council (LSUCCC) hereby gives notice that it proposes to amend and adopt the following Rule regarding the establishment of minimum standards for occupant loads in A-2 occupancies and for wind speeds in residential construction.

Title 55

PUBLIC SAFETY

Part VI. Uniform Construction Code

Chapter 3. Adoption of the Louisiana State Uniform Construction Code

§301. Louisiana State Uniform Construction Code

A. - A.1.a.ii. ...

iii. Amend chapter 9 to adopt and amend 2012 *International Building Code*, section 903.2.1.2 Group A-2 (2.). The fire area has an occupant load of 300 or more.

iv. Amend chapter 10, section 1018.5 Air Movement in corridors. Corridors that require protection under Table 1018.1—Corridor Fire-Resistance Rating, shall not serve as supply, return, exhaust, relief or ventilation air ducts.

v. Amend chapter 16, section 1609.1.2, exceptions 1. Wood structural panels with a minimum thickness of 7/16 inch (11.1 mm) and maximum panel span of 8 feet (2438 mm) shall be permitted for opening protection in one- and two-story buildings. Panels shall be precut so that they shall be attached to the framing surrounding the opening containing the product with the glazed opening. Panels shall be predrilled as required for the anchorage method and shall be secured with the attachment hardware provided. Attachments shall be designed to resist the components and cladding loads determined in accordance with the provisions of ASCE 7, with corrosion-resistant attachment hardware provided and anchors permanently installed on the building. Attachment in accordance with Table 1609.1.2 with corrosion-resistant attachment hardware provided and anchors permanently installed on the building is permitted for buildings with a mean roof height of 45 feet (13,716 mm) or less where wind speeds do not exceed 140 mph (63 m/s).

vi. Amend chapter 16, section 1613.1 Scope. Every structure, and portion thereof, including nonstructural components that are permanently attached to structures and their supports and attachments, shall be designed and constructed to resist the effects of earthquake motions in accordance with ASCE7, excluding Chapter 14 and Appendix 11A. The seismic design category for a structure

is permitted to be determined in accordance with Section 1613 or ASCE 7-10. Figure 1613.5(1) shall be replaced with ASCE 7-10 Figure 22-1. Figure 1613.5(2) shall be replaced with ASCE 7-10 Figure 22-2.

vii. Amend chapter 23, section 2308.2, exceptions 4. Wind speeds shall not exceed 110 miles per hour (mph) (48.4m/s) (3-second gust) for buildings in exposure category B.

A.2. - A.3. ...

3.a. *International Residential Code*, 2009 Edition, not including Parts I-Administrative, V-Mechanical, VII-Plumbing and VIII-Electrical. The applicable standards referenced in that code are included for regulation of construction within this state. The enforcement of such standards shall be mandatory only with respect to new construction, reconstruction, additions to homes previously built to the International Residential Code, and extensive alterations. Appendix J, Existing Buildings and Structures, may be adopted and enforced only at the option of a parish, municipality, or regional planning commission. Adopt and amend 2012 IRC section R301.2.1. Part IV-Energy Conservation of the latest edition of the *International Residential Code* is hereby amended to require that supply and return ducts be insulated to a minimum of R-6. Furthermore, 2012 IRC R301.2.1.1 (Design Criteria) shall be amended as follows and shall only apply to the *International Residential Code*:

i. adopt and amend 2012 IRC section R301.2.1.1 (Design Criteria); R301.2.1.1 Wind limitations and wind design required. The wind provisions of this code shall not apply to the design of buildings where the basic wind speed from Figure R301.2(4)A equals or exceeds 110 miles per hour (49 m/s). Subject to the following exceptions:

(a) for concrete construction, the wind provisions of this code shall apply in accordance with the limitations of Sections R404 and R611;

(b) for structural insulated panels, the wind provisions of this code shall apply in accordance with the limitations of Section R613. In regions where the basic wind speed shown on Figure R301.2(4)A equals or exceeds 110 miles per hour (49 m/s), the design of buildings for wind loads shall be in accordance with one or more of the following methods;

(c) AF and PA Wood Frame Construction Manual (WFCM); or

(d) ICC Standard for Residential Construction in High-Wind Regions (ICC 600); or

(e) ASCE Minimum Design Loads for Buildings and Other Structures (ASCE 7); or

(f) AISI Standard for Cold-Formed Steel Framing—Prescriptive Method For One- and Two-Family Dwellings (AISI S230); or

(g) *International Building Code*. The elements of design not addressed by the methods in Items 1 through 5 shall be in accordance with the provisions of this code. When ASCE 7 or the *International Building Code* is used for the design of the building, the wind speed map and exposure category requirements as specified in ASCE 7 and the *International Building Code* shall be used;

ii. adopt and amend 2012 IRC section R301.2.1.2 Protection of Openings. Exterior glazing in buildings located in windborne debris regions shall be protected from

windborne debris. Glazed opening protection for windborne debris shall meet the requirements of the Large Missile Test of ASTM E 1996 and ASTM E 1886 referenced therein. The applicable wind zones for establishing missile types in ASTM E 1996 are shown on Figure R301.2(4)C. Garage door glazed opening protection for windborne debris shall meet the requirements of an *approved* impact-resisting standard or ANSI/DASMA115. Subject to the following exception:

(a). wood structural panels with a minimum thickness of 7/16 inch (11 mm) and a maximum span of 8 feet (2438 mm) shall be permitted for opening protection in one- and two-story buildings. Panels shall be precut and attached to the framing surrounding the opening containing the product with the glazed opening. Panels shall be predrilled as required for the anchorage method and shall be secured with the attachment hardware provided. Attachments shall be designed to resist the component and cladding loads determined in accordance with either table R301.2(2) or ASCE 7, with the permanent corrosion-resistant attachment hardware provided and anchors permanently installed on the building. Attachment in accordance with table R301.2.1.2 is permitted for buildings with a mean roof height of 33 feet (10 058 mm) or less where wind speeds do not exceed 130 miles per hour (58 m/s);

iii. adopt 2012 IRC Figure R301.2(4)A and delete Figure R301.2(4)B and Figure R301.2(4)C;

iv. adopt 2012 IRC section R301.2.1.4 Exposure Category.

b. - c.ii. ...

iii. Adopt 2012 IRC Table 602.3 (1) Fastening Requirements

iv. Adopt 2012 IRC section R802.11 Roof tie-down

v. Adopt 2012 IRC Table R802.11 Rafters

vi. Substitute Chapter 11, Energy Efficiency of the 2006 IRC, in lieu of Chapter 11 Energy Efficiency of the 2009 IRC.

4.a. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.26 and R.S. 40:1730.28.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:291 (February 2007), amended LR 34:93 (January 2008), LR 34: 883 (May 2008), LR 34:2205 (October 2008), LR 35:1904 (September 2009), LR 36:2574 (November 2010), effective January 1, 2011, LR 37:601 (February 2011), LR 37:913 (March 2011), repromulgated LR 37:2187 (July 2011), repromulgated LR 37:2726 (September 2011), LR 37:3065 (October 2011), LR 38:1994 (August 2012), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, Uniform Construction Code Council, LR 39:

Family Impact Statement

The proposed Rule will not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;

5. the behavior and personal responsibility of the children.

Local governmental entities have the ability to perform the enforcement of the action proposed in accordance with R.S. 40:1730.23.

Poverty Impact Statement

The impact of the proposed Rule on child, individual, or family poverty has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on poverty in relation to individual or community asset development as provided in the R.S. 49:973. The agency has considered economic welfare factors and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on poverty.

Small Business Statement

The impact of the proposed Rule on small businesses has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Such comments should be submitted no later than May 13, 2013, at 4:30 p.m. to Mark Joiner, Louisiana State Uniform Construction Code Council, 8181 Independence Blvd., Baton Rouge, LA 70896.

Public Hearing

A public hearing is scheduled for May 29, 2013 at 8:30 a.m. at 8181 Independence Blvd., Baton Rouge, LA 70806. Please call in advance to confirm the time and place of meeting, as the meeting will be cancelled if the requisite number of comments is not received.

H. "Butch" Browning
State Fire Marshal

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: State Uniform Construction Code

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed Rule changes are not anticipated to result in additional state or local government costs or savings. These Rule changes provide for an amendment to the adopted construction codes by replacing the A-2 Occupant Load of 100, adopted in the 2009 International Building Code, with a new Occupant Load of 300 in the 2012 International Building Code, and the Basic Wind Speed Figure adopted in the 2003 International Residential Code with Figure R301.2(4)A, in the 2012 International Residential Code. This will result in an indeterminable decrease in commercial and residential construction cost for owners and contractors.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated impact on revenue collections of state or local governmental units as a result of this Rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The construction industry and prospective owners of commercial and residential buildings will be affected by the proposed changes with regard to the International Building Code (IBC) and the International Residence Code (IRC). The proposed adoption of the new IBC A-2 Occupant Load will result in a decrease in commercial construction costs for owners and contractors. The proposed adoption of the IRC amendment will replace the wind speed maps adopted in the 2003 International Residential Code with recently updated editions of these maps. The updated maps show a decrease in the likelihood of a wind event throughout much of the state, thus lowering the significant construction cost necessary to design for such an event. This will result in an indeterminable decrease in residential construction cost for owners and contractors. Due to the variety of size and scope of residential and commercial projects, potential costs and savings cannot be quantified.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes should not significantly effect competition or employment.

Jill P. Boudreaux
Undersecretary
1304#049

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Office of Alcohol and Tobacco Control**

Responsible Vendor Program
(LAC 55:VII.503, 505, 507, 509 and 511)

Under the authority of R.S. 26:931 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S 49:950, et seq., the Department of Revenue, Office of Alcohol and Tobacco Control, proposes to amend LAC 55.VII 503, 505, 507, 509 and 511 relative to the development, establishment, and maintenance of the Responsible Vendor program.

The proposed amendments to the above-referenced rules are adopted to comply and correlate with the provisions of R.S. 931 et seq. as amended and re-enacted through Act 463 of the 2012 Regular Legislative Session which creates server permits for security personnel for purposes of the Louisiana Responsible Vendor Program.

Title 55

PUBLIC SAFETY

Part VII. Alcohol and Tobacco Control

Subpart 1. Beer and Liquor

Chapter 5. Responsible Vendor Program

§503. Definitions

A. For purposes of this Chapter, the following terms are defined.

Approved Provider—an individual, unincorporated association, partnership, or corporation approved by the program administrator to provide server or security personnel training courses.

* * *

Server—any employee of a vendor, other than security personnel, who is authorized to sell or serve beverage alcohol, tobacco, and tobacco products in the normal course

of his or her employment or deals with customers who purchase or consume beverage alcohol, tobacco or tobacco products.

Server Permit—the permit issued to a server or security personnel upon completion of all required server or security personnel training and all refresher courses.

Security Personnel – any person other than a server who monitors the entrance and other areas of an establishment for purposes of identifying underage and intoxicated persons, enforcing establishment rules and regulations and otherwise providing security for the establishment and its customers where alcoholic beverages are the principle commodity sold for consumption on the premises. “Security Personnel” shall not include persons employed by hotels or motels which consist of sleeping rooms, cottages, or cabins unless the person works primarily in an area on the licensed premises of a hotel or motel where the principle commodity sold is alcoholic beverages for consumption on the licensed premises.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:931 et seq.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:1949 (October 1998), amended LR 31:939 (April 2005), LR 39:

§505. Vendors

A. - A.2. ...

3. The vendor shall require all “servers” and “security personnel” to attend an approved server or security personnel training course within 45 days of the first day of employment.

A.4 - B.2. ...

3. The vendor shall maintain server and security personnel training records, which include the name, date of birth, Social Security Number, and date of hire for all servers and security personnel. The records shall be kept on the licensed premises at all times for inspection by agents of the Office of Alcohol and Tobacco Control or other peace officers.

4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:931 et seq.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:1949 (October 1998), amended LR 25:879 (May 1999), LR 31:939 (April 2005), LR 39:

§507. Servers and Security Personnel

A. Server and security personnel applicants with special needs, such as an inability to read or write in English, hearing impairment, etc., shall contact the approved training provider at least one week before the alcohol server or security personnel training course to request specific assistance in completing the course. Notwithstanding any other provisions of Chapter 5, the approved provider and the program administrator shall attempt to provide reasonable accommodation when requested in compliance with the state and federal law.

B. Server and Security Personnel Permit

1. Server and security personnel permits shall be valid for four years from the completion of an approved responsible vendor training course.

2. Whenever a server or security personnel is employed in the service of alcohol, their permit and one

legal form of picture identification shall be available on the premises for inspection by agents of the Office of Alcohol and Tobacco Control or other peace officers.

3. A server's or security personnel's refusal or failure to make their permit available on the premises for immediate inspection by authorized agents or peace officers shall be evidence of a violation of this Section.

C. Server or Security Personnel Permit Verification. The Office of Alcohol and Tobacco Control shall maintain a list of currently certified servers and security personnel by name, permit number, and date of birth, so that vendors can verify the validity of the servers' and security personnel's permits.

D. Permit Expiration, Renewal and Lost Permits

1. Every server and security personnel permit shall expire on the last day of the month, four years after the month that the server or security personnel successfully completed the applicable responsible vendor server or security personnel course.

2. To be eligible for renewal of a server or security personnel permit, the server or security personnel shall attend and successfully pass an approved abbreviated renewal responsible vendor course and examination given by an approved provider.

3. Lost permits shall be canceled and a replacement issued by the Office of Alcohol and Tobacco Control after the server or security personnel submits an affidavit of lost permit and a \$5 fee.

E. ...

F. Server and Security Personnel Liability: Penalties, Fines, Suspension, or Revocation of Server or Security Personnel Permit. Notwithstanding any criminal actions taken, the commissioner may issue administrative violations notices to any holder of a server permit for noncompliance with this Chapter or for any violations, attributable to the server or security personnel, of Title 26 of the Louisiana Revised Statutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:931 et seq.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:1950 (October 1998), amended LR 31:939 (April 2005), LR 39:

§509. Training: Provider and Trainers

A. Trainer Certification. Approved providers shall only contract with trainers that have any combination of a minimum of two years of:

1. verified full-time employment in the fields of training, education, law, law enforcement, certified security services, substance abuse rehabilitation, the hospitality, retail industry that involved the sale or service of alcohol or tobacco products; or

2. post-secondary education in the fields of training, education, law, law enforcement, certified security services, substance abuse rehabilitation, the hospitality or retail industry that involved the sale or service of alcohol or tobacco products.

B. Provider Certification

1. Classroom Training Provider: A person or business entity that applies to become an approved provider for alcohol and tobacco server or security personnel classroom training shall submit the following to the program administrator:

a. - e. ...

2. Computer-Based Training Provider. A person or business entity that applies to become an approved provider for alcohol and tobacco server computer based education shall submit the following to the program administrator:

a. a completed application forms provided by the program administrator;

b. the names, dates of birth, Social Security numbers addresses and phone numbers, and educational and employment backgrounds of all persons engaged in the development/creation of the online (computer-based) training course;

c. a copy of the complete online (computer-based) alcohol and/or tobacco server training course;

i. the presentation and course progress platform used by a computer-based provider must be reviewed and approved by the program administrator to ensure that the course of instruction contains all topics required by the mandatory curriculum;

d. a copy of the examination and item bank;

e. verification that the security measures implemented and maintained by the provider meet state and federal standards for the transmission and protection of personal identification information and financial information of individuals accessing the website;

f. a detailed description of the provider's system to verify a student's identity;

g. approved providers for computer-based training shall make a representative available to provide information and/or technical support during standard business hours via the internet, telephone, or other method as approved by the program administrator;

h. approved providers for computer-based training must submit to audits by the Office of Alcohol and Tobacco Control for the purpose of ensuring compliance and to review and examine the following:

i. number of server courses that have been issued by the provider;

ii. security measures taken in relation to the course examination;

iii. procedures used to score the course examination;

iv. size of the examination bank to generate examination questions;

v. methodology used to translate the course and examination in multiple languages and the name and qualifications of the translator service provider;

vi. integrity of the program data generated and stored by the approved provider;

vii. program's data handling, reporting and archiving capacities, policies and procedures;

viii. approved provider's anti-discrimination policy and procedures;

i. access to the provider's web address and secured portal must be made available to the Office of Alcohol and Tobacco Control and the entire course of instruction offered to servers must be provided free of charge to the Office of Alcohol and Tobacco Control;

j. notification within 30 days of any changes in the provider's ownership or system operations;

k. approved classroom training providers shall obtain approval to become a computer-based provider by

submitting a separate application and all additional information required in this section;

l. computer-based training providers are exempt from the provisions of LAC55:VII.511.K requiring seven days notice of scheduling courses;

m. computer-based training providers shall adhere to the provisions of LAC55.VII.509.E.1 requiring submission of class rosters within 10 days of any training course.

3. After the program content or method of presentation has been approved by the program administrator, the provider shall notify and obtain approval of any changes from the program administrator.

C. the alcohol and tobacco server and security personnel permits issued to students who successfully complete the server and security personnel training programs shall be obtained from the Office of Alcohol and Tobacco Control or its designee.

D. - D.4. ...

E. Provider and Trainer Records—Rights of Inspection

1. Within 10 days of any training course, the approved provider shall submit to the Office of Alcohol and Tobacco Control a report of the server or security personnel training that includes the following:

a. the name, social security number, permit number, address, telephone number, and date of birth of each student that completed the training course and passed the required examination;

b. the name of the trainer or training provider that provided the course and the trainer's signature and verification that each student listed has successfully completed the approved course on the date indicated and any other facts as the program administrator or agents or employees of the Office of Alcohol and Tobacco Control may require.

2. Copies of the examinations and permits shall be kept for four years from the date of issue at the approved provider's place of business available for inspection and copying by agents or employees of the Office of Alcohol and Tobacco Control.

3. The approved provider shall maintain for four years from the date the class was conducted, the course information, which includes the class location, date, and time; trainer's name; and the student's names, Social Security number and permit number. These records shall be maintained at the approved provider's place of business available for inspection and copying by agents or employees of the Office of Alcohol and Tobacco Control.

F. Approved Provider Minimum Course Standards. To be certified to issue a server or security personnel permit, the provider's course of instruction must include the subject areas specified in R.S. 26:933(C) in accordance with LAC 55:VII.511.

G. Approved Server and Security Personnel Training Course Fees. Approved providers may charge fees for the cost of conducting the approved server or security personnel training courses. The fees for classroom or computer-based instruction and examination shall be approved by the program administrator and the commissioner and may not exceed \$25.

H. - H.2. ...

3. the program administrator or their designee may increase sanctions based on successive violations within a

two-year period. Numerous violations within a two-year period may indicate disregard for the law or failure to provide an acceptable responsible vendor server or security personnel program so as to warrant cancellation of the certification of either the provider or their trainer.

I. - J.1. ...

2. falsify, alter or otherwise tamper with responsible vendor server or security personnel permits or records;

3 - 6. ...

K. Approved Provider and Trainer Advertising and Promotion Standards

1. Approved provider and trainer advertising related to the responsible vendor server and security personnel training courses shall include:

1.a - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:931 et seq.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:1950 (October 1998), amended LR 31:939 (April 2005), LR 39:

§511. Responsible Vendor Program Minimum Course Standards

A. Classroom Instruction

1. Alcoholic Beverage and Tobacco Products Classroom Training—must include at least two hours of classroom instruction, exclusive of breaks and examination time, presented in a continuous block of instruction. Classes shall be limited to no more than one 10-minute break per hour.

2. Tobacco Products—must include at least one hour of classroom instruction, exclusive of breaks and examination time, presented in a continuous block of instruction.

B. Computer Based Instruction

1. Alcoholic Beverage and Tobacco Products Online Training—must include:

a. A secure log in and data transfer process to ensure security:

i. a unique log in is required for each server or security personnel that only allows that server or security personnel to access course and exam;

ii. server or security personnel shall not be able to modify first name and last name on user profile;

iii. server or security personnel provides data required by the ATC to issue permits;

iv. encryption, secure socket layer (SSL) or like, for personal information data transfer between website forms and database;

b. course and exam access information is provided to server or security personnel via email and/or directly after point of purchase;

c. online course shall automatically log users out after a minimum of 30 minutes of inactivity. Server or security personnel must be able to start where they left off;

d. online course shall provide a minimum of two hours of course instruction;

e. linear navigation requires participant to view all modules in course. Each the screen or module must be completed before proceeding to the next;

f. servers or security personnel cannot take the exam until the course has been fully completed;

g. a provider shall take extra measures to ensure to deter fraud and verify the identity of each student. Ways to

prevent fraudulent course and test taking shall include, but are not limited to:

- i. obtaining the log-in and log-off times;
 - ii. discontinuing an examination if it stays idle after a minimum period of 10 minutes of inactivity;
 - iii. asking each student personal identifying questions:
 - a). the server or security personnel must be asked a minimum of ten personal identifying questions before starting the exam;
 - b). server or security personnel must answer correctly a minimum of 5 randomly selected personal validation questions throughout the exam;
 - h. exam must be completed in one sitting. If Server or security personnel logs out, server must start over at the beginning of the exam;
 - i. the time allotted to take the examination shall not exceed 90 minutes;
 - j. if the time limit is exceeded or personal validation questions are answered incorrectly, the exam shall be reset and server must start over at the beginning of the exam;
 - k. server or security personnel must enter same exam access information to restart exam after exit;
 - l. server or security personnel will be allowed two exits from the exam before being locked out. The provider shall take sufficient measures to allow a student to re-access a previously started exam in the case of inadvertent logout;
 - m. approved providers must rotate the exam questions on a regularly scheduled basis to ensure exam security and validity;
 - n. the exam must include the 10 required Louisiana responsible vendor questions and then a minimum of 15 questions developed by the provider. The exam provider shall provide a bank from which the provider questions are taken which shall have a minimum of three times the number of items as the number of questions on the exam;
 - o. a server or security personnel must have adequate access to help desk/customer service during standard business hours to resolve technical issues without delaying the flow of instruction or examination;
 - p. no provider-based advertisements shall appear during the course of instruction and examination.
- C. The approved server or security personnel training course shall be presented in its entirety to each student in a language approved by the program administrator.
- D. Each server or security personnel training course must include an examination approved by the program administrator, which is administered by the trainer immediately following the course presentation. Students shall take the examination in writing, unless special circumstances require an oral examination. With the approval of the program administrator, the test may be offered in a language best understood by the student, or bilingual trainers may, in response to direct inquiries, clarify test questions using another language. Each student shall correctly answer at least 70 percent of the examination questions. Students who receive failing scores may be retested once at a time and place to be determined by the trainer. Otherwise, students must repeat the full course for an additional fee.

E. All training facilities shall meet the requirements of the Americans with Disabilities Act (ADA) and shall have adequate lighting, seating, easily accessible restrooms, and comfortable room temperature.

F. At the beginning of each server or security personnel training course, the trainer shall give each student:

1. an enrollment agreement that clearly states the obligations of the trainer and student, refund policies, and procedures to terminate enrollment;
2. a notice that a student must complete the course in order to take the examination;
3. a server training and/or a security personnel training workbook, approved by the program administrator, that is current, complete, and accurate. The workbook shall include an outline of the minimum course curriculum, table of contents, titles, subheadings, and page numbers. Physical specifications must meet the following minimum standards:
 - a. minimum dimensions of paper size must be 8 1/2 by 11 inches;
 - b. paper stock, excluding front and back cover, shall be white or near white, and of a quality and weight suitable for reproduction and note-taking with no ink bleed through;
 - c. type must be a minimum of 11-point in a type style commonly used for textbooks and periodicals;
 - d. binding must firmly hold the pages together in correct order and be sufficient for use during the course and as a reference;
 - e. professional printing and typesetting are not required, but reproductions must be clear, readable, and letter quality;
 - f. for ease of reading and adequate room for note-taking, white space must be a minimum of 30 percent per page with the print or copy to be no more than 70 percent of the page.
 - g. each student must be provided a copy of the applicable training workbook(s), in either paper or electronic format, that the student retains upon completion of sever and/or security personnel training course.

G. No server or security personnel training class shall include more than 100 students and students that arrive more than 15 minutes after the class begins shall not be admitted.

H. The classroom presentation must be consistent with the approved program.

I. Discussions must be pertinent to responsible beverage alcohol or tobacco sales, service, and consumption.

J. The program administrator or their designee may attend any class or computer-based course to evaluate conformance with the program certified by the program administrator.

K. At least seven days in advance, the approved provider or their authorized trainers shall give written notice to the Office of Alcohol and Tobacco Control of the date, time, and location of all courses scheduled. The Office of Alcohol and Tobacco Control shall be notified by phone or fax of course cancellations prior to the course date except when cancellation cannot be anticipated, in which case notification shall be within three business days of the scheduled course date.

L. Minimum Course Standards for Alcoholic Beverage and Tobacco Product Server Training Courses. To be certified to issue a server permit, the provider's course of

instruction shall include the subject areas specified in R.S. 26:933(C), as well as the following.

1. Introduction:
 - a. brief review of the law creating the Louisiana Responsible Vendor Program, which shall include when the program was enacted, who is required to participate and how, when it becomes mandatory, nature of permits issued to server, when server permits expire, obligation of server to attend a course every two years, and server renewal procedures;
 - b. objectives of the Responsible Vendor Program, which shall include education of vendors, servers, and their customers about responsible sales, service, and consumption of alcohol and tobacco; and prevention of the misuse, illegal use, and abuse of alcohol.
2. Alcoholic beverage and tobacco products course:
 - a. classification of alcohol as a depressant and its effect on the human body, particularly on the ability to drive a motor vehicle:
 - i. alcohol is a depressant not a stimulant;
 - ii. how alcohol travels through the body, including how quickly it enters the bloodstream and reaches the brain;
 - iii. alcohol's effect on a person's ability to drive a motor vehicle, specifically reviewing alcohol's effect on a person's behavior, self-control, and judgment;
 - iv. outline of Louisiana's driving while intoxicated laws and penalties for violations;
 - b. effects of alcohol when taken with commonly used prescription and nonprescription drugs:
 - i. mixing alcohol with other drugs can produce dangerous side effects. It is especially dangerous to drive under the influence of alcohol and other drugs because of the increased impairment due to both;
 - ii. alcohol and other depressant drugs. Mixing alcohol with other depressants dangerously increases the depressant effect on the body;
 - iii. alcohol and stimulants. Stimulants do not cancel the intoxication and impairment due to alcohol;
 - iv. alone, many prescription and nonprescription drugs impair the ability to drive a motor vehicle;
 - v. the effects of commonly used prescription and nonprescription drugs;
 - vi. review of the effects of contemporary designer drugs such as GHB and Rohypnol;
 - c. absorption rate, as well as the rate at which the human body can dispose of alcohol and how food affects the absorption rate:
 - i. rate at which the human body absorbs alcohol;
 - ii. blood alcohol concentration (BAC) and how to estimate a person's BAC. Include drink equivalency guidelines;
 - iii. how the human body disposes of alcohol;
 - iv. the effect of food on the absorption rate;
 - v. time is the only real factor that reduces intoxication;
 - d. methods of identifying and dealing with underage and intoxicated persons, including strategies for delaying and denying sales and service to intoxicated and underage persons:
 - i. procedures and methods for detecting false identification;

- ii. procedures and methods for denying service or entry to underage persons;
 - iii. procedures and methods for identifying intoxicated persons including behavioral warning signs and other signs of impairment;
 - iv. procedures and methods for preventing over intoxication;
 - v. procedures and methods for terminating service to intoxicated persons;
- e. state laws and regulations regarding the sales and service of alcoholic beverages for consumption on or off premises:
 - i. legal forms of identification in Louisiana;
 - ii. legal age to purchase, possess, and consume alcohol and penalties for violation;
 - iii. legal age to enter licensed premises and penalties for violation;
 - iv. legal age to be employed by a vendor and penalties for violation;
 - v. acts prohibited on licensed premises and penalties for violation;
 - f. parish and municipal ordinances and regulations that affect the sale and service of alcoholic beverages for consumption on or off the licensed premises. These provisions will depend on the jurisdiction of the servers attending the class and may vary according to the parish and municipality:
 - i. legal hours of operation and Sunday sales;
 - ii. noise, litter, and zoning;
 - iii. leaving premises with alcohol;
 - iv. preemption of parish and municipal server training courses;
 - v. parish or municipal server licensing requirements;
 - vi. other relevant regulations;
 - g. state and federal laws and regulations related to the lawful age to purchase tobacco products and age verification requirements:
 - i. state and federal legal purchasing age;
 - ii. federal age verification requirements;
 - iii. state and federal laws and regulations related to vending machines;
 - iv. state laws related to sign posting requirements;
 - v. state laws related to minimum packaging requirements.
3. Tobacco Products Course
 - a. Outline and review of all relevant changes to local, state, and federal laws, rules and regulations affecting the retail operation of tobacco businesses. With regard to local laws, rules and regulations, each approved provider shall determine the changes for each jurisdiction in which it offers Tobacco courses and submit their local tobacco curriculum to the program administrator for approval;
 - b. state and federal laws and regulations related to the lawful age to purchase tobacco products and age verification requirements:
 - i. state and federal legal purchasing age;
 - ii. federal age verification requirements;
 - iii. state and federal laws and regulations related to vending machines;
 - iv. state laws related to sign posting requirements;

v. state laws related to minimum packaging requirements;

c. state laws and regulation regarding the sales and service of tobacco products:

i. legal form of identification in Louisiana;

ii. procedures and methods for detecting false identification;

d. guidelines for prevention of tobacco use and addiction:

i. health risks;

ii. addiction problems with adolescents;

iii. health effects of smoking among young people;

e. what you should know about tobacco:

i. tobacco and athletic performance;

ii. tobacco and personal appearance;

f. state laws and regulations regarding the sales and service of the Louisiana Lottery Corporation Law:

i. a review of the Louisiana Lottery Corporation Law, which shall include when it was established;

ii. legal age to purchase a lottery ticket and penalties for violation;

iii. legal age to claim a lottery ticket;

iv. legal age to sell lottery ticket;

v. advertisement;

g. parish and municipal ordinances and regulations that affect the sale and service of tobacco products. These provisions will depend on the jurisdiction of the servers attending the class and may vary according to the parish and municipality.

M. Minimum Course Standards for Security Personnel Training Courses. To be certified to issue a server permit for security personnel, the provider's course of instruction shall include the subject areas specified in R.S. 26:933(C) and (D) and the minimum course standards specified on subsection L of these regulations as well as the following:

1. A description of the role and duties of security personnel that includes the responsibility to monitor the entrance and other areas of an establishment for purposes of identifying underage and intoxicated persons; to enforce the establishment's rules; and to otherwise provide security for the establishment and its customers.

2. A review of the skills that make security personnel more effective including communication skills, self-control, posture, confidence, physical fitness and knowledge of certain laws.

3. Techniques to identify and handle disruptive customers and customer altercations including but not limited to:

a. description of common types of disturbances;

b. techniques to identify and manage potentially disruptive customers;

c. proper procedures to employ when removing a disruptive customer from the premises including common mistakes to avoid; and

d. identification and description of the types of resistance security personnel may encounter when dealing with disruptive customers.

4. Description and review of proper restraint techniques and when to use such techniques including the following:

a. description and review of "positional asphyxia" including techniques to manage "positional asphyxia"; and

b. description and review of "excited delirium" including techniques to manage "excited delirium."

5. Identification and review of state laws related to the duties and responsibilities of security personnel including:

a. simple, second degree and aggravated battery;

b. simple and aggravated assault;

c. false imprisonment;

d. simple and aggravated criminal damage to property;

e. entry on or remaining in places or on land after being forbidden;

f. simple, second degree and armed robbery; and

g. disturbing the peace.

N. Minimum Standards and Certification for an Abbreviated Renewal Course

1. To be certified to conduct abbreviated renewal server training courses, the approved provider's course of instruction shall include the following.

a. An Outline and Review of All Relevant Changes to Local, State, and Federal Laws, Rules and Regulations Affecting the Retail Operation of Alcohol Beverage and or Tobacco Businesses. With regard to local laws, rules and regulations, each approved provider shall determine the changes for each jurisdiction in which it offers abbreviated renewal courses and submit their local renewal course curriculum to the program administrator for approval.

b. Statistics Related to Drunk Driving Arrests, Accidents and Fatalities in Louisiana. The approved provider shall incorporate the statistics into their abbreviated renewal course curriculum in the same form and content that it is provided by the program administrator and compiled from the most current annual report of the Louisiana Highway Safety Commission or National Highway Traffic Safety Administration.

c. Techniques to Prevent Persons Suspected of Being Intoxicated from Operating Motor Vehicles.

d. Any Other Information Relevant to the Prevention of Drunk Driving.

e. Information Concerning Societal and Health Concerns Related to the Use of Tobacco Products.

2. All abbreviated renewal course program content and method of presentation shall be approved by the Program Administrator prior to conducting any abbreviated renewal server training courses.

3. All abbreviated renewal server training courses shall include at least one hour of classroom instruction exclusive of breaks and examination time, and shall be presented in a continuous block of time.

4. Each abbreviated renewal server training course shall include an examination approved by the program administrator.

5. Prior to teaching an abbreviated renewal server training course, the trainer must receive proof of prior training from the server. This proof may consist of a server permit not having expired for longer than one year, or any other proof deemed valid by the discretion of the trainer.

6. Unless otherwise provided for in this Subsection, all other regulations applicable to regular server training courses shall apply to renewal server training courses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:931 et seq.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 31:940 (April 2005), LR 39:

Family Impact Statement

As required by Act 1183 of the Regular Session of the Louisiana Legislature, the following Family Impact Statement is submitted for publishing with the notice of intent in the Louisiana Register. A copy of this statement will also be provided to the legislative oversight committees.

1. The Effect on the Stability of the Family. Implementation of this proposed Rule and/or amendment will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. Implementation of this proposed Rule and/or amendment will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. Implementation of this proposed Rule and/or amendment will have no effect on the functioning of the family.

4. The Effect on the Family Earnings and Budget. Implementation of this proposed Rule and/or amendment will have no effect on family earnings and budget.

5. The Effect on Behavior and Personal Responsibility of Children. Implementation of this proposed Rule and/or amendment will have no effect on behavior and responsibility of children.

6. The Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rule. Implementation of this proposed Rule and/or amendment will have no effect on the ability of the family or local government to perform this function.

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973

Public Comments

Interested persons may submit data, views, or arguments, in writing to Commissioner Troy M. Hebert, Office of Alcohol and Tobacco Control, 8585 Archives Avenue, Suite 220, Baton Rouge, LA 70809; P.O. Box 66404, Baton Rouge, LA 70896-6404; or via facsimile to (225) 922-0011. All comments must be submitted by 4 p.m. on Friday, May 31, 2013.

Public Hearing

A public hearing will be held on Friday, May 31, 2013 at 4 p.m. in the Office of Alcohol and Tobacco Control at 8585 Archives Avenue, 2nd Floor in Baton Rouge, LA

Troy Hebert
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Responsible Vendor Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed amendments establish criteria for the implementation and standards of computer-based server training and the permitting and training of security personnel as passed in Act 463 of 2012 and authorized by statute. When the

fiscal note was reported, ATC estimates included cost figures that have subsequently been discounted, since it was not considered that existing compliance checks and inspections would also accommodate the security personnel permit requirements. There are no additional implementation costs to the Agency for computer-based server courses as the computer-based programs are developed by third party providers, and the agency currently processes all permits for servers. Although implementation of the security personnel training course will result in approximately 2,500 additional permits to be processed each year, any costs to the Agency will be minimal due to recent technological advances within the Agency whereby a significant portion of the permitting process is automated electronically. The technological advances, through the creation of a Responsible Vendor database and on-line submissions, now allows for permits, which were traditionally printed manually, to be printed in large batches of 500 or more at one time per employee. Additionally, responsible vendor permits are now valid for 4 years, rather than 2 years. It is anticipated that these reduced labor costs will offset any implementation costs associated with implementation of the security personnel training courses.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Promulgation of these proposed amendments will not materially affect revenue collections of state or local governmental units. Permits are currently issued under the Responsible Vendor program and will not require additional fees due to the proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Promulgation of these proposed amendments will not have any impact on alcoholic beverage and/or tobacco permit holders as these permit holders currently pay the fee associated with the Responsible Vendor Program. Applicable security personnel will pay up to \$25 every four years for training courses. Course providers will be impacted by the costs associated with establishing training programs and benefited by the income generated through training course fees. Responsible Vendor Program permits and associated paperwork requirements are valid for 4 years instead of 2 years, which could reduce administrative requirements.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed amendment will have no impact on competition and employment since all similarly situated entities have the same requirements and obligations.

Troy M. Hebert
Commissioner
1304#017

Gregory V Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Department of Transportation and Development Office of Engineering

Access Connection Permits (LAC 70:I.Chapter 15)

In accordance with the applicable provisions of the Administrative Procedures Act, R.S. 49:750 et seq., notice is hereby given that the Louisiana Department of Transportation and Development intends to make a changes to LAC 70:I.Chapter 15 entitled "Access Connection Permits" to allow the department more flexibility in issuing access connection permits to the public in accordance with R.S. 48:344.

Title 70
TRANSPORTATION
Part I. Highway Construction

Chapter 15. Access Connection Permits

§1515. Permit Conditions

A. - C. ...

D. The applicant may be required to post a bond in order to secure an access connection permit. If required, this bond shall be posted in accordance with DOTD policy, and shall be an amount as identified by the DOTD district office as sufficient to cover the expenses of all work or improvements required within the DOTD right-of-way as a condition of an access connection permit. The cost of restoration shall be borne by the applicant.

E. - F. ...

G. After having been constructed, access connection(s) shall at all times be subject to inspection with the right reserved to require changes, additions, repairs, and relocations at any time considered necessary to permit the location and/or to provide proper and safe protection to life and property on or adjacent to the highway. The cost of making such mandated changes, additions, repairs, and relocations shall be borne by the applicant.

H. The relocations or alterations of any access, approach, or other improvement constructed on the right-of-way shall require a re-evaluation of the access connection(s).

I. If the applicant is unable to commence construction within 12 months of the permit issue date, the applicant may request a 6-month extension from the DOTD. No more than two 6-month extensions may be granted under any circumstances. If the access connection is not constructed within 24 months from the permit issue date, the permit shall be considered expired. Any person wishing to reestablish an access connection permit that has expired shall begin again with the application process.

J. When the adjacent highway is under construction, a letter of no objection shall be obtained from the highway contractor before the application can be approved and the permit can be issued. A copy of this letter shall be attached to the permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 37:347 (January 2011), amended by the Department of Transportation and Development, Office of Engineering, LR 39:

§1519. Permit Reapplication and Modifications to Existing Commercial Access Connections

A. ...

B. If the property is reconstructed/remodeled/redeveloped, the owner shall submit a request for re-evaluation of the access connection(s). The evaluation shall contain all necessary information and documentation as described in DOTD policies, as well as a copy of the old access connection permit.

C. If the property owner reconstructs the access connection, a request for re-evaluation shall be submitted. The DOTD reserves the right to make changes to the original permit during the process in order to improve safety and operations.

D. If DOTD road maintenance and/or construction operations affect the condition or necessitate the reconstruction, improvement, modification, or removal of an

existing access connection, a re-evaluation of the access connection geometrics, location, etc. may be performed by the district traffic operations engineer. The access connection permit may be re-issued according to the most current DOTD standards, and DOTD reconstruction efforts shall follow these standards. The cost to reconstruct the access connection to the right-of-way shall be borne by the DOTD. Any additional costs to improve on-site conditions may be borne by the property owner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 37:349 (January 2011), amended by the Department of Transportation and Development, Office of Engineering, LR 39:

§1521. Access Connection Requirements

A. - A.1. ...

2. In addition, the following constraints shall apply.

a. Full access should not be granted within the functional influence area of the intersection. The influence area shall be as defined in DOTD policies. For purposes of this Chapter, the *functional influence area of an intersection* shall be defined as the area beyond the physical intersection of two roadways and/or access connection points that:

2.a.i. - 3. ...

4. If the subject property is located at the intersection of two routes, an access connection may be permitted on both routes, but one must be limited to right-in/right-out access. The determination of the access connection locations and restrictions on each shall be at the discretion of the DOTD according to this rule and other applicable DOTD policies.

5. The applicant shall provide sufficient on-site circulation to ensure the safe ingress and egress of vehicles on the site. This on-site circulation shall be contained within the owner's property boundaries and shall not encroach upon the right-of-way in any way. Adequate on-site vehicle storage shall be provided in order to prevent any overflow of queued/waiting traffic in the travel lane(s) of the adjacent roadway(s).

6. ...

B. The granting of access shall adhere to the following decision hierarchy.

1. Each property or group of adjacent properties with a single owner or development plan should be granted no more than once access point, unless Paragraphs 4 and 5 of this Section are completed and approved. The DOTD reserves the right to limit access to adjacent properties to those access connections which already exist. All properties shall receive adequate access, but that may be accomplished through required access sharing with a neighboring property.

2. - 3. ...

4. A request for an access connection on a state route where alternative access connection opportunities exist on non-state route(s) may be accompanied by a traffic impact study according to DOTD policies. This study shall comply with the guidelines and policies set forth by the DOTD for such studies. In order to consider state route access in these cases, the study shall show that the lack of access on the state route causes unreasonable negative impacts to the traffic flow and safety in the vicinity of the property.

5. Requests for access connections in excess of one access connection or for an access connection on a state

route where non-state route access exists must be reviewed and approved by the district engineer administrator. Such requests may be accompanied by a traffic impact study. This study shall comply with the guidelines and policies set forth by the DOTD for such studies. In order to consider an additional access connection or an access connection on a state route where non-state route access exists, the study shall show that the lack of the requested access connections causes unreasonable negative impacts to the traffic flow and safety in the vicinity of the property and shall demonstrate that an additional access connection will contribute to the overall improvement of the safety and efficiency of the adjacent roadways and of the transportation system.

C. - D. ...

E. Gates, fences, signage, landscaping, or other decorative or access-control features (i.e. gated subdivision) shall not be located within the right-of-way. Any such access-control feature shall be located so that a minimum storage of two vehicles (50' storage length minimum; greater distances may be required by the DOTD) is provided outside of the limits of the right-of-way. Gated access shall not be permitted as an approach to a traffic signal.

F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 37:350 (January 2011), amended by the Department of Transportation and Development, Office of Engineering, LR 39:

§1525. Access Connections—Spacing and Sharing

A. ...

B. A minimum spacing as defined in DOTD policy should be maintained between access connections. If frontage is not available to maintain minimum spacing of access connections, the DOTD reserves the right to require adjacent property owners to share a single access connection.

C. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 37:351 (January 2011), amended by the Department of Transportation and Development, Office of Engineering, LR 39:

§1529. Access Connections on Roadways with Medians

A. On roadways with center medians of any type, access connections should not be permitted to align with median cuts or crossovers, and should be located as far from these cuts and crossovers as possible within property limit constraints.

B. ...

C. All access on roadways with medians may be restricted to right-in/right-out movements only, and if required, shall be constructed in such a way as to prevent any other movements. This shall apply to both residential and commercial access.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 37:351 (January 2011), amended by the Department of Transportation and Development, Office of Engineering, LR 39:

§1531. Design Requirements

A. ...

B. All traffic generator access connections shall be constructed with permanent hard surface type materials (i.e. asphalt or concrete) for a distance specified in DOTD policy. Aggregate access connections shall not be permitted within the right-of-way for these types of connections.

C. All entrances and exits shall be located so that drivers approaching or using them will have adequate sight distance in all directions along the highway in order to maneuver safely and without interfering with traffic. Minimum required sight distance shall be calculated using the methods outlined in DOTD policies.

D. All access connections shall be designed and constructed in accordance with all DOTD plans and specifications regarding drainage requirements. Culvert sizes, proposed elevations and proposed slopes shall be approved by the DOTD prior to issuance of an access connection permit. The DOTD may require a drainage study to be performed at the expense of the applicant.

E. Access connections shall be constructed according to DOTD Standard Plans and other applicable policies and provisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 37:351 (January 2011), amended by the Department of Transportation and Development, Office of Engineering, LR 39:

§1533. Construction Requirements

A. - D. ...

E. The services of an independent DOTD-approved inspector may be required to inspect the construction of all DOTD-required improvements in the DOTD right-of-way. The inspection process shall be in accordance with current DOTD policy. The DOTD district office may elect to perform independent inspections of work. Satisfactory completion and acceptance of the improvements by DOTD will be based upon the reports received from the inspector(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 37:352 (January 2011), amended by the Department of Transportation and Development, Office of Engineering, LR 39:

§1535. Improvements to the Adjacent Transportation System

A. ...

B. Mitigation, which may be required by the DOTD, may be determined through a complete traffic impact study and/or traffic signal study review process. Required mitigation shall be reviewed by the district engineer administrator. Any required mitigation shall be noted on the permit(s) as required in accordance with DOTD policies, and bond amounts shall be appropriate for such mitigation if required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 37:352 (January 2011), amended by the Department of Transportation and Development, Office of Engineering, LR 39:

§1541. Appeals Process

A. ...

B. Appeals shall be filed in accordance with DOTD appeals policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 37:352 (January 2011), amended by the Department of Transportation and Development, Office of Engineering, LR 39:

Family Impact Statement

The proposed Rule change should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically:

1. The implementation of this proposed Rule change will have no known or foreseeable effect on the stability of the family.

2. The implementation of this proposed Rule change will have no known or foreseeable effect on the authority and rights of parents regarding the education and supervision of their children.

3. The implementation of this proposed Rule change will have no known or foreseeable effect on the functioning of the family.

4. The implementation of this proposed Rule change will have no known or foreseeable effect on the family earnings and family budget.

5. The implementation of this proposed Rule change will have no known or foreseeable effect on the behavior and personal responsibility of children.

6. The implementation of this proposed Rule change will have no known or foreseeable effect on the ability of the family or local government to perform this function.

Poverty Impact Statement

This proposed Rule change should not have any known or foreseeable impact on child, individual, or family poverty in relation to individual or community asset development as defined by R.S. 49:973. Specifically:

1. The implementation of this proposed Rule change will have no known or foreseeable effect on household income, assets, and financial security.

2. The implementation of this proposed Rule change will have no known or foreseeable effect on early childhood development and preschool through postsecondary education development.

3. The implementation of this proposed Rule change will have no known or foreseeable effect on employment and workforce development.

4. The implementation of this proposed Rule change will have no known or foreseeable effect on taxes and tax credits.

5. The implementation of this proposed Rule change will have no known or foreseeable effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Public Comments

All interested persons so desiring shall submit oral or written data, views, comments or arguments no later than 30 days from the date of publication of this Notice of Intent to Peter Allain, Traffic Engineering Division Administrator, Office of Engineering, Department of Transportation and

Development, P.O. Box 94245, Baton Rouge, LA 70804-9245, telephone (225) 242-4631.

Sherri H. LeBas
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Access Connection Permits

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no implementation costs or savings to state or local governmental units as a result of this proposed rule change. The rule, as it currently exists, prevents the Department of Transportation and Development (DOTD) from exercising discretion in the issuance of access connection permits. In many instances the information required by the rules is not needed to adequately assess the impact an access connection will have on a particular location. This inflexibility places undue burdens and unreasonable delays resulting in potential financial hardships on many property owners wishing to obtain access connection permits. The proposed rule change provides appropriate flexibility and guidance to DOTD staff determining the issuance of access connection permits.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units as a result of this proposed rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no anticipated costs to directly affected persons or non-governmental groups as a result of this proposed rule change. Property owners may realize economic benefits associated with a flexible access connection permit review process that will expedite approval in some instances that currently experience significant and unnecessary delays.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

All businesses affected by this proposed rule change will be affected equitably. No development will have an economic advantage over any competitor as a result of this proposed rule change. The proposed rule change may expedite approval of access connection permits in some instances that are currently delayed unnecessarily, which may have short-term positive effects on employment if a business can open or expand faster than under the current rule.

Richard L. Savoie
Chief Engineer
1304#022

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Transportation and Development Office of Engineering

Automatic License Plate Camera Devices (LAC 70:II.527)

Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 48:381 and R.S. 48:26, that the Department of Transportation and Development, Office of Engineering, proposes to amend Chapter 5 to provide for permits to law enforcement agencies for the

installation of automatic license plate camera devices on department rights-of-way.

Title 70
TRANSPORTATION
Part II. Utilities

Chapter 5. Standards Manual for Accommodating Facilities on Highway Right-of-Way

§527. Miscellaneous

A.1. - A.11.d. ...

e. Automatic License Plate Camera Devices. This type of permit is normally issued to Louisiana law enforcement agencies. For purposes of this rule, law enforcement agencies eligible for this permit may include the Louisiana State Police, sheriffs' departments of the parishes of this state and municipal police departments. These permits must be reviewed and approved by the district administrator or his designee. If the automatic license plate camera device will be placed upon a bridge or sign truss, approval must also be obtained from the department headquarters utility and permit engineer. Permit applicants must comply with all permit requirements.

12. - 15. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 19:14, 30:210, 30:211-217, 32:236, 38:2223, 38:3074, 48:26, 48:191-193, 48:217, 48:295.1-4, 48:343-344, 48:381-383, 48:385-387, and 51:1901-1909.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Utility and Permit Section, LR 20:317 (March 1994), amended by the Department of Transportation and Development, Office of Engineering, LR 39:

Family Impact Statement

The proposed Rule change should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically:

1. The implementation of this proposed Rule change will have no known or foreseeable effect on the stability of the family.

2. The implementation of this proposed Rule change will have no known or foreseeable effect on the authority and rights of parents regarding the education and supervision of their children.

3. The implementation of this proposed Rule change will have no known or foreseeable effect on the functioning of the family.

4. The implementation of this proposed Rule change will have no known or foreseeable effect on the family earnings and family budget.

5. The implementation of this proposed Rule change will have no known or foreseeable effect on the behavior and personal responsibility of children.

6. The implementation of this proposed Rule change will have no known or foreseeable effect on the ability of the family or local government to perform this function.

Poverty Impact Statement

This proposed Rule change should not have any known or foreseeable impact on child, individual, or family poverty in relation to individual or community asset development as defined by R.S. 49:973. Specifically:

1. The implementation of this proposed Rule change will have no known or foreseeable effect on household income, assets, and financial security.

2. The implementation of this proposed Rule change will have no known or foreseeable effect on early childhood development and preschool through postsecondary education development.

3. The implementation of this proposed Rule change will have no known or foreseeable effect on employment and workforce development.

4. The implementation of this proposed Rule change will have no known or foreseeable effect on taxes and tax credits.

5. The implementation of this proposed Rule change will have no known or foreseeable effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Public Comments

All interested persons so desiring shall submit oral or written data, views, comments or arguments no later than 30 days from the date of publication of this Notice of Intent to Simone Ardoin, Systems Preservation Engineer Administrator, Office of Engineering, Department of Transportation and Development, P.O. Box 94245, Baton Rouge, LA 70804-9245, telephone (225) 379-1951.

Sherri H. LeBas
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Automatic License
Plate Camera Devices**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This proposed rule will provide a procedure for Louisiana law enforcement agencies to obtain permits from the Department of Transportation and Development to install automatic license plate camera devices on department rights of way. The cameras are designed to capture images of license plates from vehicles traveling on state roadways. These cameras will enable law enforcement to timely locate vehicles used in criminal activities such as automobile theft, robberies, and kidnappings. A law enforcement agency wishing to install an automatic license plate camera device will incur an initial cost of approximately \$14,000 for the purchase and installation of each camera device. As this is a relatively new technology, the costs associated with the ongoing maintenance and operation of the camera devices cannot be determined at this time. The costs associated with monitoring the images will be assumed by existing law enforcement personnel at an indeterminable cost dependent upon the level and scope of utilization. The costs associated with issuing the permits will be assumed by existing DOTD personnel and are considered to be marginal or insignificant. There are no direct cost savings as a result of this proposed rule. However, the use of automatic license plate camera devices may result in the more timely apprehension of criminal suspects thereby potentially reducing law enforcement personnel and equipment costs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units as a result of this proposed rule. The department does not assess permit costs to governmental entities.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Automatic license plate camera devices are a relatively new product and have not seen widespread use by Louisiana law enforcement agencies. To the degree that these devices are widely adopted in the state, the installation, maintenance and ongoing support for the devices may result in increased economic opportunities for companies supplying and servicing such equipment.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Automatic license plate camera devices are a relatively new product and have not seen widespread use by Louisiana law enforcement agencies. To the degree that these devices are widely adopted in the state, the installation, maintenance and ongoing support for the devices may result in increased economic opportunities for companies supplying and servicing such equipment.

Eric Kalivoda
Deputy Secretary
1304#023

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Treasury
Board of Trustees of the Registrars of Voters
Employees' Retirement System**

Internal Revenue Code Provisions (LAC 58:XVII.Chapter 2)

In accordance with R.S. 49:950 et seq. of the Administrative Procedure Act, notice is hereby given that the Board of Trustees of the Registrars of Voters Employees' Retirement System has approved for advertisement the adoption of Chapter 2 of Part XVII, included in Title 58, Retirement, of the Louisiana Administrative Code. This intended action complies with the statutory law administered by the Board of Trustees of the Registrars of Voters Employees' Retirement System. This proposed Rule is being adopted pursuant to newly enacted R.S. 11:2093 (Acts 2012, No. 229), the effective date of enactment of which will be the formal adoption of these rules. Newly enacted R.S. 11:2093 provides that rules and regulations be adopted which will assure that the Registrars of Voters Employees' Retirement System will remain a tax-qualified retirement plan under the United States *Internal Revenue Code* and the regulations thereunder. A preamble to this proposed action has not been prepared.

**Title 58
RETIREMENT**

Part XVII. Registrars of Voters Employees' Retirement System

Chapter 2. Internal Revenue Code Provisions

§201. Limitation on Benefits

A. The limitations of this Chapter shall apply in limitation years beginning on or after July 1, 2007, except as otherwise provided herein.

B. The annual benefit otherwise payable to a member under the plan at any time shall not exceed the maximum permissible benefit. If the benefit the member would otherwise accrue in a limitation year would produce an annual benefit in excess of the maximum permissible benefit, the benefit shall be limited (or the rate of accrual

reduced) to a benefit that does not exceed the maximum permissible benefit.

C. If the member is, or has ever been, a member in another qualified defined benefit plan (without regard to whether the plan has been terminated) maintained by the employer or a predecessor employer, the sum of the member's annual benefits from all such plans may not exceed the maximum permissible benefit.

D. The application of the provisions of this chapter shall not cause the maximum permissible benefit for any member to be less than the member's accrued benefit under all the defined benefit plans of the employer or a predecessor employer as of the end of the last limitation year beginning before July 1, 2007 under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such defined benefit plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to Section 415 of the *Internal Revenue Code* in effect as of the end of the last limitation year beginning before July 1, 2007, as described in section 1.415(a)-1(g)(4) of the income tax regulations.

E. The limitations of this chapter shall be determined and applied taking into account the rules in Section G.

F. Definitions

Annual Benefit—a benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this article. For a member who has or will have distributions commencing at more than one annuity starting date, the annual benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this chapter as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to section 1.401(a)-20, Q and A 10(d), and with regard to section 1.415(b)-1(b)(1)(iii)(B) and (C) of the income tax regulations.

a. No actuarial adjustment to the benefit shall be made for:

i. survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the member's benefit were paid in another form;

ii. benefits that are not directly related to retirement benefits (such as a disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or

iii. the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the *Internal Revenue Code* and would otherwise satisfy the limitations of this chapter, and the plan provides that the amount payable under the form of benefit in any limitation year shall not exceed the limits of this chapter applicable at the annuity starting date, as increased in subsequent years pursuant to

Section 415(d). For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form. The determination of the annual benefit shall take into account social security supplements described in Section 411(a)(9) of the *Internal Revenue Code* and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant Section 1.411(d)-4, Q and A-3(c), of the income tax regulations, but shall disregard benefits attributable to employee contributions or rollover contributions. Effective for distributions in plan years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with §201.F.1.b.or F.1.c.

b. Benefit Forms Not Subject to Section 417(e)(3)

i. The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this Subparagraph F.1.b, if the form of the member's benefit is either:

(a). a non-decreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the member (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse); or

(b). an annuity that decreases during the life of the member merely because of:

(i). the death of the survivor annuitant (but only if the reduction is not below 50 percent of the benefit payable before the death of the survivor annuitant); or

(ii). the cessation or reduction of Social Security supplements or qualified disability payments [as defined in Section 401(a)(11)].

ii. Limitation years beginning before July 1, 2007. For limitation years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using whichever of the following produces the greater annual amount:

(a). the interest rate and the mortality table (or other tabular factor) specified in the plan for adjusting benefits in the same form; and

(b). a 5 percent interest rate assumption and the applicable mortality table for that annuity starting date.

iii. Limitation years beginning on or after July 1, 2007. For limitation years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of:

(a). the annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the member's form of benefit; and

(b). the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a 5 percent interest rate assumption and the applicable mortality table for that annuity starting date.

c. Benefit Forms Subject to Section 417(e)(3). The straight life annuity that is actuarially equivalent to the

member's form of benefit shall be determined under this paragraph if the form of the member's benefit is other than a benefit form described in §201.F.1.b. In this case, the actuarially equivalent straight life annuity shall be determined as follows.

i. Annuity Starting Date in Plan Years Beginning After 2005. If the annuity starting date of the member's form of benefit is in a plan year beginning after 2005, the actuarially equivalent straight life annuity is equal to the greatest of:

(a). the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the interest rate and the mortality table (or other tabular factor) specified in the plan for adjusting benefits in the same form; and

(b). the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table; and

(c). the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the applicable interest rate and the applicable mortality table, divided by 1.05.

ii. Annuity Starting Date in Plan Years Beginning in 2004 or 2005. If the annuity starting date of the member's form of benefit is in a plan year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using whichever of the following produces the greater annual amount:

(a). the interest rate and the mortality table (or other tabular factor) specified in the plan for adjusting benefits in the same form; and

(b). a 5.5 percent interest rate assumption and the applicable mortality table. If the annuity starting date of the member's benefit is on or after the first day of the first plan year beginning in 2004 and before December 31, 2004, the application of this §201.F.1.c. shall not cause the amount payable under the member's form of benefit to be less than the benefit calculated under the plan, taking into account the limitations of this chapter, except that the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using whichever of the following produces the greatest annual amount:

(i). the interest rate and the mortality table (or other tabular factor) specified in the plan for adjusting benefits in the same form;

(ii). the applicable interest rate and the applicable mortality table; and

(iii). the applicable interest rate (as in effect on the last day of the last plan year beginning before January 1, 2004, under provisions of the plan then adopted and in effect) and the applicable mortality table.

Applicable Interest Rate—the rate of interest on 30 year Treasury securities (or any subsequent rate used under

Section 417(e) of the *Internal Revenue Code*) as specified by the Internal revenue service for the lookback month. The lookback month applicable to the stability period is the second calendar month preceding the first day of the stability period. The stability period is the plan year that contains the annuity starting date for the distribution and for which the applicable interest rate remains constant.

Applicable Mortality Table—the applicable mortality table within the meaning of Section 417(e)(3)(B) of the *Internal Revenue Code*.

415 Safe-Harbor Compensation—

a. *compensation*—wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the employer maintaining the plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a nonaccountable plan (as described in Section 1.62-2(c) of the income tax regulations), and excluding the following:

i. employer contributions [other than elective contributions described in Section 402(e)(3), Section 408(k)(6), Section 408(p)(2)(A)(i), or Section 457(b)] to a plan of deferred compensation (including a simplified employee pension described in Section 408(k) or a simple retirement account described in Section 408(p), and whether or not qualified) to the extent such contributions are not includible in the member's gross income for the taxable year in which contributed, and any distributions (whether or not includible in gross income when distributed) from a plan of deferred compensation (whether or not qualified);

ii. amounts realized from the exercise of a nonstatutory stock option (that is, an option other than a statutory stock option as defined in Section 1.421-1(b) of the income tax regulations), or when restricted stock (or property) held by the member either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

iii. amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option;

iv. other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the member and are not salary reduction amounts that are described in Section 125);

v. other items of remuneration that are similar to any of the items listed in Clauses i through iv above.

b. For any self-employed individual, compensation shall mean earned income.

c. Except as provided herein, for limitation years beginning after December 31, 1991, compensation for a limitation year is the compensation actually paid or made available during such limitation year.

d. For limitation years beginning on or after July 1, 2007, compensation for a limitation year shall also include compensation paid by the later of 2 1/2 months after an member's severance from employment with the employer

maintaining the plan or the end of the limitation year that includes the date of the member's severance from employment with the employer maintaining the plan, if:

i. the payment is regular compensation for services during the member's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer;

ii. the payment is for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued; or

iii. the payment is received by the member pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time if employment had continued, but only to the extent includible in gross income.

e. Any payments not described above shall not be considered compensation if paid after severance from employment, even if they are paid by the later of 2 1/2 months after the date of severance from employment or the end of the limitation year that includes the date of severance from employment. Back pay, within the meaning of Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

f. For limitation years beginning after December 31, 1997, compensation paid or made available during such limitation year shall include amounts that would otherwise be included in compensation but for an election under Sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).

g. For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the member by reason of Section 132(f)(4).

Defined Benefit Compensation Limitation—100 percent of a member's high three-year average compensation, payable in the form of a straight life annuity. In the case of a member who is rehired after a severance from employment, the defined benefit compensation limitation is the greater of 100 percent of the member's high three-year average compensation, as determined prior to the severance from employment or 100 percent of the member's high three-year average compensation, as determined after the severance from employment under §201.G.

Defined Benefit Dollar Limitation—effective for limitation years ending after December 31, 2001, the defined benefit dollar limitation is \$160,000, automatically adjusted under Section 415(d) of the *Internal Revenue Code*, effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a straight life annuity. The new limitation shall apply to limitation years ending with or within the calendar year of the date of the adjustment, but a member's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year.

Employer—for purposes of this chapter, employer shall mean the employer that adopts this plan, and all members of a controlled group of corporations, as defined in Section 414(b) of the *Internal Revenue Code*, as modified by Section

415(h), all commonly controlled trades or businesses [as defined in Section 414(c), as modified, except in the case of a brother-sister group of trades or businesses under common control, by Section 415(h)], or affiliated service groups [as defined in Section 414(m)] of which the adopting employer is a part, and any other entity required to be aggregated with the employer pursuant to Section 414(o) of the *Internal Revenue Code*.

Formerly Affiliated Plan of the Employer—a plan that, immediately prior to the cessation of affiliation, was actually maintained by the employer and, immediately after the cessation of affiliation is not actually maintained by the employer. For this purpose, cessation of affiliation means the event that causes an entity to no longer be considered the employer, such as the sale of a member controlled group of corporations, as defined in Section 414(b) of the *Internal Revenue Code*, as modified by Section 415(h), to an unrelated corporation, or that causes a plan to not actually be maintained by the employer, such as transfer of plan sponsorship outside a controlled group.

High Three-Year Average Compensation—the average compensation for the three consecutive years of service (or, if the member has less than three consecutive years of service, the member's longest consecutive period of service, including fractions of years, but not less than one year) with the employer that produces the highest average. In the case of a member who is rehired by the employer after a severance from employment, the member's high three-year average compensation shall be calculated by excluding all years for which the member performs no services for and receives no compensation from the employer (the break period) and by treating the years immediately preceding and following the break period as consecutive. A member's compensation for a year of service shall not include compensation in excess of the limitation under Section 401(a)(17) of the *Internal Revenue Code* that is in effect for the calendar year in which such year of service begins.

Limitation Year—a fiscal year, from July 1 to June 31. All qualified plans maintained by the employer must use the same limitation year. If the limitation year is amended to a different 12-consecutive month period, the new limitation year must begin on a date within the limitation year in which the amendment is made.

Maximum Permissible Benefit—the lesser of the defined benefit dollar limitation or the defined benefit compensation limitation (both adjusted where required, as provided below).

a. Adjustment for Less than 10 Years of Participation or Service. If the member has less than 10 years of participation in the plan, the defined benefit dollar limitation shall be multiplied by a fraction:

i. the numerator of which is the number of years (or part thereof, but not less than one year) of participation in the plan; and

ii. the denominator of which is 10. In the case of a Member who has less than 10 years of service with the employer, the defined benefit compensation limitation shall be multiplied by a fraction:

(a). the numerator of which is the number of years (or part thereof, but not less than one year) of Service with the employer; and

(b). the denominator of which is 10.

b. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement before Age 62 or after Age 65. Effective for benefits commencing in limitation years ending after December 31, 2001, the defined benefit dollar limitation shall be adjusted if the annuity starting date of the member's benefit is before age 62 or after age 65. If the annuity starting date is before age 62, the defined benefit dollar limitation shall be adjusted under Clause b.i of this Paragraph, as modified by Clause b.iii of this Paragraph. If the annuity starting date is after age 65, the defined benefit dollar limitation shall be adjusted under Clause b.ii of this Paragraph, as modified by Clause b.iii of this Paragraph.

i. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement before Age 62

(a). Limitation Years Beginning before July 1, 2007. If the annuity starting date for the member's benefit is prior to age 62 and occurs in a limitation year beginning before July 1, 2007, the defined benefit dollar limitation for the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under §201.F.11.a. for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(i). the interest rate and the mortality table (or other tabular factor) specified in the plan for adjusting benefits in the same form; or

(ii). a 5 percent interest rate assumption and the applicable mortality table.

(b). Limitation Years Beginning on or After July 1, 2007

(i). Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the annuity starting date for the member's benefit is prior to age 62 and occurs in a limitation year beginning on or after July 1, 2007, and the plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the defined benefit dollar limitation for the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Subparagraph a of this Paragraph for years of participation less than 10, if required) with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for the annuity starting date (and expressing the member's age based on completed calendar months as of the annuity starting date).

(ii). Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the annuity starting date for the member's benefit is prior to age 62 and occurs in a limitation year beginning on or after July 1, 2007, and the plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the defined benefit dollar limitation for the member's annuity starting date is the lesser of the limitation determined under Division b.i.(b).(i) of this Paragraph and the defined benefit

dollar limitation (adjusted under Subparagraph a of this Paragraph for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the plan at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under the plan at age 62, both determined without applying the limitations of this article.

ii. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement after Age 65

(a). Limitation Years Beginning Before July 1, 2007. If the annuity starting date for the member's benefit is after age 65 and occurs in a limitation year beginning before July 1, 2007, the defined benefit dollar limitation for the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Subparagraph a of this Paragraph for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(i). the interest rate and the mortality table (or other tabular factor) specified in the plan for adjusting benefits in the same form; or

(ii). a 5-percent interest rate assumption and the applicable mortality table.

(b). Limitation Years Beginning Before July 1, 2007

(i) Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the member's benefit is after age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the defined benefit dollar limitation at the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Subparagraph a of this Paragraph for years of participation less than 10, if required), with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for that annuity starting date (and expressing the member's age based on completed calendar months as of the annuity starting date).

(ii). Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the member's benefit is after age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the defined benefit dollar limitation at the member's annuity starting date is the lesser of the limitation determined under §201.F.11.b.ii.(b).(i). and the defined benefit dollar limitation (adjusted under §201.F.11.a. for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan at the

member's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity under the plan at age 65, both determined without applying the limitations of this article. For this purpose, the adjusted immediately commencing straight life annuity under the plan at the member's annuity starting date is the annual amount of such annuity payable to the member, computed disregarding the member's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the plan at age 65 is the annual amount of such annuity that would be payable under the plan to a hypothetical member who is age 65 and has the same accrued benefit as the member.

iii. Notwithstanding the other requirements of this Subparagraph F.10.b., no adjustment shall be made to the defined benefit dollar limitation to reflect the probability of a member's death between the annuity starting date and age 62, or between age 65 and the annuity starting date, as applicable, if benefits are not forfeited upon the death of the member prior to the annuity starting date. To the extent benefits are forfeited upon death before the annuity starting date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the member's death if the plan does not charge members for providing a qualified preretirement survivor annuity, as defined in Section 417(c) of the *Internal Revenue Code*, upon the member's death.

c. Minimum Benefit Permitted. Notwithstanding anything else in this section to the contrary, the benefit otherwise accrued or payable to a member under this plan shall be deemed not to exceed the maximum permissible benefit if:

i. the retirement benefits payable for a limitation year under any form of benefit with respect to such member under this plan and under all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the employer do not exceed \$10,000 multiplied by a fraction:

(a). the numerator of which is the member's number of years (or part thereof, but not less than one year) of service (not to exceed 10) with the employer; and

(b). the denominator of which is 10; and

ii. the employer (or a predecessor employer) has not at any time maintained a defined contribution plan in which the member participated (for this purpose, mandatory employee contributions under a defined benefit plan, individual medical accounts under Section 401(h), and accounts for postretirement medical benefits established under Section 419A(d)(1) are not considered a separate defined contribution plan).

Predecessor Employer—if the employer maintains a plan that provides a benefit which the member accrued while performing services for a former employer, the former employer is a predecessor employer with respect to the member in the plan. A former entity that antedates the employer is also a predecessor employer with respect to a member if, under the facts and circumstances, the employer constitutes a continuation of all or a portion of the trade or business of the former entity.

Severance from Employment—an employee has a severance from employment when the employee ceases to be

an employee of the employer maintaining the plan. An employee does not have a severance from employment if, in connection with a change of employment, the employee's new employer maintains the plan with respect to the employee.

Year of Participation—the member shall be credited with a year of participation (computed to fractional parts of a year) for each accrual computation period for which the following conditions are met:

a. the member is credited with at least the number of hours of service (or period of service if the elapsed time method is used) for benefit accrual purposes, required under the terms of the plan in order to accrue a benefit for the accrual computation period; and

b. the member is included as a member under the eligibility provisions of the plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a year of participation credited to the member shall equal the amount of benefit accrual service credited to the member for such accrual computation period. A member who is permanently and totally disabled within the meaning of Section 415(c)(3)(C)(i) of the *Internal Revenue Code* for an accrual computation period shall receive a year of participation with respect to that period. In addition, for a member to receive a year of participation (or part thereof) for an accrual computation period, the plan must be established no later than the last day of such accrual computation period. In no event shall more than one Year of Participation be credited for any 12-month period.

Year of Service—for purposes of Section 201.G, the member shall be credited with a year of service (computed to fractional parts of a year) for each accrual computation period for which the member is credited with at least the number of hours of service (or period of service if the elapsed time method is used) for benefit accrual purposes, required under the terms of the plan in order to accrue a benefit for the accrual computation period, taking into account only service with the employer or a predecessor employer.

G. Other Rules

1. Benefits under Terminated Plans. If a defined benefit plan maintained by the employer has terminated with sufficient assets for the payment of benefit liabilities of all plan members and a member in the plan has not yet commenced benefits under the plan, the benefits provided pursuant to the annuities purchased to provide the member's benefits under the terminated plan at each possible annuity starting date shall be taken into account in applying the limitations of this article. If there are not sufficient assets for the payment of all members' benefit liabilities, the benefits taken into account shall be the benefits that are actually provided to the Member under the terminated plan.

2. Benefits Transferred from the Plan. If a member's benefits under a defined benefit plan maintained by the employer are transferred to another defined benefit plan maintained by the employer and the transfer is not a transfer of distributable benefits pursuant Section 1.411(d)-4, Q and A-3(c), of the income tax regulations, the transferred benefits are not treated as being provided under the transferor plan (but are taken into account as benefits provided under the transferee plan). If a member's benefits under a defined benefit plan maintained by the employer are

transferred to another defined benefit plan that is not maintained by the employer and the transfer is not a transfer of distributable benefits pursuant Section 1.411(d)-4, Q and A-3(c), of the income tax regulations, the transferred benefits are treated by the employer's plan as if such benefits were provided under annuities purchased to provide benefits under a plan maintained by the employer that terminated immediately prior to the transfer with sufficient assets to pay all members' benefit liabilities under the plan. If a member's benefits under a defined benefit plan maintained by the employer are transferred to another defined benefit plan in a transfer of distributable benefits pursuant Section 1.411(d)-4, Q and A-3(c), of the income tax regulations, the amount transferred is treated as a benefit paid from the transferor plan.

3. Formerly Affiliated Plans of the Employer. A formerly affiliated plan of an employer shall be treated as a plan maintained by the employer, but the formerly affiliated plan shall be treated as if it had terminated immediately prior to the cessation of affiliation with sufficient assets to pay members' benefit liabilities under the plan and had purchased annuities to provide benefits.

4. Plans of a Predecessor Employer. If the employer maintains a defined benefit plan that provides benefits accrued by a member while performing services for a predecessor employer, the member's benefits under a plan maintained by the predecessor employer shall be treated as provided under a plan maintained by the employer. However, for this purpose, the plan of the predecessor employer shall be treated as if it had terminated immediately prior to the event giving rise to the predecessor employer relationship with sufficient assets to pay members' benefit liabilities under the plan, and had purchased annuities to provide benefits; the employer and the predecessor employer shall be treated as if they were a single employer immediately prior to such event and as unrelated employers immediately after the event; and if the event giving rise to the predecessor relationship is a benefit transfer, the transferred benefits shall be excluded in determining the benefits provide under the plan of the predecessor employer.

5. Special Rules. The limitations of this chapter shall be determined and applied taking into account the rules in Section 1.415(f)-1(d), (e) and (h) of the income tax regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:2093.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the Registrars of Voters Employees' Retirement System, LR 39:

§202. Required Minimum Distributions

A.1. Unless the member has elected otherwise on or before December 31, 1983, the entire benefit of a member shall be distributed over a period not longer than the longest of the following periods:

- a. the member's life;
- b. if the member is married, the life of the member's designated beneficiary;
- c. the member's life expectancy;
- d. the joint life and last survivor life expectancy of the member and his designated beneficiary.

2. If the member is married and his spouse survives him, the designated beneficiary for at least a qualified joint and survivor annuity and 50 percent of his deferred

retirement option plan account shall be his spouse, unless such spouse has consented to the contrary in writing before a notary public. For purposes of this Paragraph:

Spouse—that person who is married to the member under a legal regime of community of acquets and gains on his effective date of retirement or effective date of participation in the deferred retirement option plan, whichever is earlier.

3. If the member was a member on or before December 31, 1983, he shall be deemed to have made the election referred to herein. If a member dies after the commencement of his benefits, the remaining portion of his benefit shall be distributed at least as rapidly as before his death.

B.1. If the member dies before his benefit has commenced the remainder of such interest shall be distributed to the member's beneficiary within five years after the date of such member's death.

2. Paragraph 1 of this Subsection shall not apply to any portion of a member's benefit which is payable to or for the benefit of a designated beneficiary or beneficiaries, over the life of or over the life expectancy of such beneficiary, so long as such distributions begin not later than one year after the date of the member's death, or, in the case of the member's surviving spouse, the date the member would have attained the age of 70 years and six months. If the designated beneficiary is a child of the member, for purposes of satisfying the requirement of Paragraph 1 of this Subsection, any amount paid to such child shall be treated as if paid to the member's surviving spouse if such amount would become payable to such surviving spouse, if alive, upon the child's reaching age eighteen or, if later, upon the child's completing a designated event. For purposes of the preceding sentence, a designated event shall be the later of the date the child is no longer disabled, or the date the child ceases to be a full-time student or attains age 23, if earlier.

3. Paragraph 1 of this Subsection shall not apply if the distribution of the member's interest has commenced and is for a term certain over a period permitted in Subsection A of this Section.

4. Paragraph 1 of this Subsection shall not apply if the member has elected otherwise on or before December 31, 1983, or such later date to which such election period shall be subject under *Internal Revenue Code* Section 401(a).

C. As to any benefit payable by the retirement system which is not optional as of December 31, 1983, the member shall be considered to have made the election referred to in Subsections A and B of this Section, if he was a member on or before such time.

D. If by operation of law or by action of the board of trustees, a survivor benefit is payable to a specified person or persons, the member shall be considered to have designated such person as an alternate beneficiary hereunder. If there is more than one such person, then the youngest disabled child shall be considered to have been so designated, or, if none, then the youngest person entitled to receive a survivor benefit shall be considered to have been so designated. The designation of a designated beneficiary hereunder shall not prevent payment to multiple beneficiaries but shall only establish the permitted period of payments.

E. Payment in accordance with the survivor benefit provisions of R.S. 11:2077 shall be deemed not to violate Subsections A and B of this Section.

F. This Section shall be effective for members of the system who complete any service under the system on or after July 1, 1992, with employers contributing to the system.

G. Distributions from the system shall be made in accordance with the requirements set forth in *Internal Revenue Code* Section 401(a)(9), including the minimum distribution incidental benefit rules applicable thereunder.

H.1. A member's benefits shall commence to be paid on or before the required beginning date.

2. The required beginning date shall be April 1 of the calendar year following the later of the calendar year in which the member attains 70 1/2 years of age, or the calendar year in which the employee retires. Effective for plan years beginning on or after January 1, 1998, the required beginning date shall be April 1 of the year following the later of the year the member attained 70 1/2 or the year he terminated employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:2093.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the Registrars of Voters Employees' Retirement System, LR 39:

§203. Direct Rollovers

A. Notwithstanding any other provision of law to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the board of trustees, to have any portion of an "eligible rollover distribution", as specified by the distributee, paid directly to an "eligible retirement plan", as those terms are defined below.

B. The following definitions shall apply.

Direct Rollover—a payment by the system to the eligible retirement plan specified by the distributee.

Distributee—shall include:

- a. a member or former member;
- b. the member's or former member's surviving spouse, or the member's or former member's former spouse with whom a benefit or a return of employee contributions is to be divided pursuant to R.S. 11:291(B), with reference to an interest of the member or former spouse;
- c. the member's or former member's non-spouse beneficiary, provided the specified distribution is to an eligible retirement plan as defined in Subparagraphs a and b of the definition of *eligible retirement plan* in this Section.

Eligible Retirement Plan—any of the following:

- a. an individual retirement account described in Section 408(a) of the *Internal Revenue Code*;
- b. an individual retirement annuity described in Section 408(b) of the *Internal Revenue Code*;
- c. an annuity plan described in Section 403(a) of the *Internal Revenue Code*;
- d. a qualified trust as described in Section 401(a) of the *Internal Revenue Code*, provided that such trust accepts the member's eligible rollover distribution;
- e. an eligible deferred compensation plan described in Section 457(b) of the *Internal Revenue Code* that is maintained by an eligible governmental employer, provided

the plan contains provisions to account separately for amounts transferred into such plan; and

f. an annuity contract described in Section 403(b) of the *Internal Revenue Code*.

Eligible Rollover Distribution—any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

a. any distribution that is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life or life expectancy of the member, or the joint lives or joint life expectancies of the member and the member's designated beneficiary, or for a specified period of ten years or more;

b. any distribution to the extent that such distribution is required under Section 401(a)(9) of the United States *Internal Revenue Code*; and

c. any distribution which is made upon hardship of the employee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:2093.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the Registrars of Voters Employees' Retirement System, LR 39:

§204. Annual Compensation Limitation

A. Unless otherwise provided in this Chapter, the accrued benefit of each Section 401(a)(17) employee as that term is defined below shall be the greater of the following:

1. the employee's accrued benefit determined with respect to the benefit formula applicable for the plan year beginning on or after January 1, 1996, as applied to the employee's total years of service taken into account for purposes of benefit accruals;

2. the sum of:

a. the employee's accrued benefit as of the last day of the last plan year beginning before January 1, 1996, frozen in accordance with the provisions of Section 1.401(a)(4)-1 through 1.401(a)(4)-13 of the Code of Federal Regulations;

b. the employee's accrued benefit determined under the benefit formula applicable for the plan year beginning on or after January 1, 1996, as applied to the employee's years of service credited to the employee for plan years beginning on or after January 1, 1996, for purposes of benefit accruals.

B. *A Section 401(a)(17) Employee*—any employee whose current accrued benefit, as of a date on or after the first day of the first plan year beginning on or after January 1, 1996, is based on compensation for a year beginning prior to the first day of the first plan year beginning on or after January 1, 1996, that exceeded \$150,000.

C. If an employee is not a Section 401(a)(17) employee, his accrued benefit in this system shall not be based upon compensation in excess of the annual limit of Section 401(a)(17) of the United States *Internal Revenue Code* as amended and revised.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:2093.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the Registrars of Voters Employees' Retirement System, LR 39:

§205. General

A. The assets of this system's pension plan shall be held for the exclusive benefit of the employees who are or become participating members of the system and their survivors and beneficiaries, and of retirees and their survivors and beneficiaries. No part of the corpus, the system's pension plan assets held in trust, or income of the system's pension plan shall be used for or diverted to purposes other than the exclusive benefit of such members and retirees, or their survivors or beneficiaries, whether by operation or natural termination of the system's pension plan, by power of revocation or amendment, by the happening of a contingency, by collateral assignment, or by any other means.

B. The retirement benefit earned by a member shall be fully vested and nonforfeitable no later than the date he becomes eligible to retire. Benefits of affected members shall also become vested and nonforfeitable to the extent funded, upon the termination or partial termination of the system's pension plan or the complete discontinuance of contributions thereto.

C. Forfeitures resulting from a termination of employment or a withdrawal of a member's own contributions may not be used to increase benefits to remaining members. This shall not preclude an increase in benefits by amendment to the benefit formula made possible by favorable investment results or for any other reason.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:2093.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Registrars of Voters Employees' Retirement System, LR 39:

Family Impact Statement

The proposed adoption of LAC 58:XVII.201, regarding *Internal Revenue Code* provisions applicable to the Registrars of Voters Employees' Retirement System, should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children; or
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Public Comments

Any interested person may submit written comments regarding this proposed Rule to Lorraine C. Dees, Director, Registrars of Voters Employees' Retirement System by mail to 300 State Street, Room 107, Jennings, LA 70546-0057. All comments must be received no later than 4:30 p.m., May 15, 2013.

Lorraine C. Dees
Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Internal Revenue Code Provisions

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
There is no anticipated direct material effect on state or local governmental units. Act 229 of the 2012 Regular Legislative Session repealed statutes providing for compliance with federal tax qualification requirements and required the Board of Trustees for the Registrars of Voters Employees' Retirement System to promulgate rules incorporating such Internal Revenue Code Provisions into the retirement system's plan.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no anticipated impact on revenue collections of state or local governmental units as a result of the proposed rule change.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There are no anticipated costs and/or economic benefits to directly affected persons or non-governmental groups as a result of the proposed rule change.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no anticipated impact on competition and employment as a result of the proposed rule change.

Lorraine C. Dees
Director
1304#046

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Alligator Regulations (LAC 76:V.701)

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission do hereby advertise their intent to promulgate rules for use of snares and amend the rules relative to alligator regulations.

Title 76

WILDLIFE AND FISHERIES

Part V. Wild Quadrupeds and Wild Birds

Chapter 7. Alligators

§701. Alligator Regulations

A. - A.4.a.i.(n). ...

ii. All license types prescribed above except nongame quadruped exhibitor and breeder and resident and nonresident alligator hunter expire annually on June 30. Nongame quadruped exhibitor and breeder and resident and nonresident alligator hunter licenses expire annually on December 31.

4.b. - 17.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115, R.S. 56:259, R.S. 56:262, R.S. 56:263, and R.S. 56:280.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:1070 (December 1990), amended LR 17:892 (September 1991), LR 19:215 (February 1993), LR 20:321 (March 1994), LR 26:1492 (July 2000), LR 28:1996 (September 2002), LR 30:2338 (October 2004), LR 30:2878 (December 2004), LR 31:2267 (September

2005), LR 33:677 (April 2007), LR 35:690 (April 2009), LR 37:2421 (August 2011), LR 39:

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including, but not limited to, the filing of the fiscal and economic impact statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Family Impact Statement

In accordance with Act #1183 of the 1999 Regular Session of the Louisiana Legislature, the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Public Comments

Interested persons may submit written comments on the proposed Rule to Bob Love, Department of Wildlife and Fisheries, P.O. Box 98000, Baton Rouge, LA, 70898-9000 no later than 4:30 p.m., May 20, 2013.

Ronald Graham
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Alligator Regulations

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
The proposed rule change will have no anticipated implementation costs to state or local governmental units.
The proposed rule changes the effective dates of an alligator hunting license. Currently alligator hunting licenses are effective from July 1 through June 30. The proposed change will make alligator hunting licenses effective from January 1 through December 31. This change will affect all classes of alligator hunting licenses. This change will provide consistency among states harvesting alligators and will eliminate confusion when the department provides alligator harvest data.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed rule change will have no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The proposed rule change will result in no additional costs or economic benefit to affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed rule change is expected to have no effect on competition and employment.

Lois Azzarello
Undersecretary
1304#058

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Workforce Commission
Office of Workers' Compensation**

**Workers' Compensation Medical Reimbursement Schedule
(LAC 40:I.5157)**

Editor's Note: A portion of Table 2 of §5157 is being repromulgated as information was inadvertently left out at submission. This Notice of Intent can be viewed in its entirety on pages 686-919 of the March 2013 edition of the *Louisiana Register*.

Notice is hereby given, in accordance with R.S. 49:950 et seq., that the Louisiana Workforce Commission, Office of Workers' Compensation, pursuant to the authority vested in the director of the Office of Workers' Compensation by R.S. 23:1310.1 and in accordance with applicable provisions of the Administrative Procedure Act, proposes to amend LAC 40:I.3119, 3329, 3911, 4119, 4339, 4537, 5157 and 5399.

This proposed Rule will update the current procedural terminology (CPT) and Healthcare Common Procedure Coding System (HCPCS) codes in order to be consistent with the American Medical Association (AMA). The revision will add codes that are currently not reflected in the Louisiana Workers' Compensation fee schedule, and remove

all obsolete CPT/HCPCS codes. The revisions will also include site of service differentials for new and updated CPT codes where applicable. Implementation of this proposed fee schedule update will allow for more accurate coding by providers and carriers/self-insured employers but should not impact those receiving medical procedures under workers' compensation. The Louisiana Workers' Compensation physical therapy and occupational therapy proprietary codes will no longer be utilized, as the new fee schedule updates will allow for utilization of the appropriate national CPT/HCPCS physical therapy and occupational therapy codes.

Title 40

LABOR AND EMPLOYMENT

Part I. Workers' Compensation Administration

Subpart 2. Medical Guidelines

Chapter 51. Medical Reimbursement Schedule

§5157. Maximum Reimbursement Allowances

A. ...

B. Table 2

Editor's Note: The following CPT code information replaces those corresponding rows promulgated within Table 2 on March 20, 2013. The corrected coding information is listed below in numerical order.

State of Louisiana Office of Workers' Compensation Schedule of Maximum Allowances for Medical Services						
CPT Code	Modifier	Description	Global Days	Maximum Amount	Non-Facility Maximum Amount	Facility Maximum Amount
11950		Therapy for contour defects	0	\$149		
11951		Therapy for contour defects	0	\$224		
11952		Therapy for contour defects	0	\$298		
11954		Therapy for contour defects	0	\$335		
11976		Removal of contraceptive		\$300		
11980		Implant hormone pellet(s).	0	\$215		
13102		Repair wound/lesion add-on		\$227		
13122		Repair wound/lesion add-on		\$248		
13133		Repair wound/lesion add-on		\$349		
13153		Repair wound/lesion add-on		\$388		
15850		Removal of sutures		\$176		
20955		Microvascular fibula graft	90	\$5,321		
20972		Bone-skin graft, metatarsal	90	\$4,522		
20973		Bone-skin graft, great toe	90	\$5,887		
20979		US bone stimulation...	0		\$110	\$68
21137		Reduction of forehead	90	\$1,613		
21138		Reduction of forehead	90	\$1,876		
21139		Reduction of forehead	90	\$2,293		
21150		Reconstruct midface, lefort	90	\$3,494		
21151		Reconstruct midface, lefort	90	\$3,951		
21154		Reconstruct midface, lefort	90	\$4,626		
21155		Reconstruct midface, lefort	90	\$4,575		
21159		Reconstruct midface, lefort	90	\$5,158		
21160		Reconstruct midface, lefort	90	\$5,420		
21172		Reconstruct orbit/forehead	90	\$3,854		
21175		Reconstruct orbit/forehead	90	\$4,745		
21179		Reconstruct entire forehead	90	\$3,011		
21180		Reconstruct entire forehead	90	\$3,258		
21181		Contour cranial bone lesion	90	\$1,500		
21182		Reconstruct cranial bone	90	\$4,075		
21183		Reconstruct cranial bone	90	\$4,905		
21184		Reconstruct cranial bone	90	\$4,958		
22318		Treat odontoid fx w/o graft	90	\$3,400		
22319		Treat odontoid fx w/ graft	90	\$3,805		

**State of Louisiana
Office of Workers' Compensation
Schedule of Maximum Allowances for Medical Services**

CPT Code	Modifier	Description	Global Days	Maximum Amount	Non-Facility Maximum Amount	Facility Maximum Amount
25915		Amputation of forearm	90	\$2,085		
26550		Construct thumb replacement	90	\$3,377		
26580		Repair hand deformity	90	\$3,197		
26587		Reconstruct extra finger	90	\$1,895		
26590		Repair finger deformity	90	\$2,635		
28360		Reconstruct cleft foot	90	\$2,267		
30400		Reconstruction of nose	90	\$2,146		
30410		Reconstruction of nose	90	\$2,763		
30420		Reconstruction of nose	90	\$2,904		
30430		Revision of nose	90	\$1,976		
30435		Revision of nose	90	\$2,365		
30450		Revision of nose	90	\$3,177		
31588		Revision of larynx	90	\$2,430		
31590		Reinnervate larynx	90	\$1,904		
32997		Total lung lavage.....	0	\$741		
33140		Heart revascularize (tmr)	90	\$3,348		
33282		Implant pat-active ht record	90	\$650		
33284		Remove pat-active ht record	90	\$465		
33410		Replacement of aortic valve	90	\$5,396		
33417		Repair of aortic valve	90	\$3,521		
33470		Revision of pulmonary valve	90	\$2,610		
33472		Revision of pulmonary valve	90	\$2,865		
33476		Revision of heart chamber	90	\$3,237		
33478		Revision of heart chamber	90	\$3,345		
33647		Repair heart septum defects	90	\$3,868		
33660		Repair of heart defects	90	\$3,739		
33665		Repair of heart defects	90	\$4,074		
33670		Repair of heart chambers	90	\$4,208		
33681		Repair heart septum defect	90	\$3,891		
33684		Repair heart septum defect	90	\$4,029		
33688		Repair heart septum defect	90	\$4,018		
33690		Reinforce pulmonary artery	90	\$2,531		
33702		Repair of heart defects	90	\$3,269		
33710		Repair of heart defects	90	\$4,327		
33720		Repair of heart defect	90	\$3,269		
33730		Repair heart-vein defect(s)	90	\$4,343		
33735		Revision of heart chamber	90	\$2,706		
33737		Revision of heart chamber	90	\$2,813		
33750		Major vessel shunt	90	\$2,841		
33755		Major vessel shunt	90	\$2,825		
33762		Major vessel shunt	90	\$2,879		
33764		Major vessel shunt and graft	90	\$2,754		
33774		Repair great vessels defect	90	\$3,836		
33775		Repair great vessels defect	90	\$4,076		
33776		Repair great vessels defect	90	\$4,306		
33777		Repair great vessels defect	90	\$4,175		
33778		Repair great vessels defect	90	\$5,008		
33779		Repair great vessels defect	90	\$5,173		
33780		Repair great vessels defect	90	\$5,263		
33781		Repair great vessels defect	90	\$4,933		
33786		Repair arterial trunk	90	\$4,933		
33788		Revision of pulmonary	90	\$3,261		
33802		Repair vessel defect	90	\$2,312		
33803		Repair vessel defect	90	\$2,565		
33813		Repair septal defect	90	\$2,622		
33814		Repair septal defect	90	\$3,417		
33820		Revise major vessel	90	\$2,062		
33822		Revise major vessel	90	\$2,236		
33824		Revise major vessel	90	\$2,489		
33840		Remove aorta constriction	90	\$2,705		
33845		Remove aorta constriction	90	\$2,844		
33851		Remove aorta constriction	90	\$2,854		
33852		Repair septal defect	90	\$2,938		
33935		Transplantation, heart/lung	90	\$10,589		
33968		Remove aortic assist device	90	\$71		
34501		Repair valve, femoral vein	90	\$1,947		

State of Louisiana
Office of Workers' Compensation
Schedule of Maximum Allowances for Medical Services

CPT Code	Modifier	Description	Global Days	Maximum Amount	Non-Facility Maximum Amount	Facility Maximum Amount
34510		Transposition of vein valve	90	\$2,493		
34520		Cross-over vein graft	90	\$1,046		
34530		Leg vein fusion	90	\$1,502		
35500		Harvest vein for bypass		\$693		
35870		Repair vessel graft defect	90	\$2,711		
35881		Revise graft w/vein...	90	\$2,231		
36460		Transfusion service, fetal		\$748		
36819		Av fusion by basilic vein	90	\$1,588		
36823		Insertion of cannula(s)		\$2,805		
37788		Revascularization, penis	90	\$2,851		
38120		Laparoscopy, splenectomy		\$2,187		
38570		Laparoscopy, lymph node biop	10	\$1,101		
38571		Laparoscopy, lymphadenectomy	10	\$1,619		
38572		Laparoscopy, lymphadenectomy	10	\$1,977		
38792		Identify sentinel node	0	\$84		
39560		Resect diaphragm, simple	90	\$1,645		
39561		Resect diaphragm, complex	90	\$2,601		
43280		Laparoscopy, fundoplasty	90	\$2,250		
43651		Laparoscopy, vagus nerve	90	\$1,360		
43652		Laparoscopy, vagus nerve	90	\$1,588		
43653		Laparoscopy, gastrostomy	90	\$1,191		
44970		Laparoscopy, appendectomy	90	\$1,246		
47560		Laparoscopy w/cholangio	90	\$556		
47561		Laparo w/cholangio/biopsy	0	\$610		
47562		Laparoscopic cholecystectomy	90	\$1,558		
47563		Laparo cholecystectomy graph	90	\$1,483		
47564		Laparo cholecystectomy explr	90	\$2,309		
47570		Laparo cholecystoenterostomy	90	\$1,608		
48554		Transplantallograft pancreas	90	\$5,322		
48556		Removal, allograft pancreas	90	\$2,648		
49320		Diag laparo separate proc	10	\$680		
49321		Laparoscopy, biopsy...	10	\$720		
49322		Laparoscopy, aspiration	10	\$771		
49323		Laparo drain lymphocele	90	\$1,343		
49650		Laparo hernia repair initial	90	\$888		
49651		Laparo hernia repair recur	90	\$1,157		
50544		Laparoscopy, pyeloplasty	90	\$2,552		
50546		Laparoscopic nephrectomy	90	\$2,460		
50547		Laparo removal donor kidney	90	\$3,321		
50548		Laparo-asst remove k/ureter	90	\$2,756		
50945		Laparoscopy ureterolithotomy	90	\$1,990		
51990		Laparo urethral suspension	90	\$1,574		
51992		Laparo sling operation	90	\$1,788		
54670		Repair testis injury	90	\$827		
54690		Laparoscopy, orchiectomy	90	\$1,532		
54692		Laparoscopy, orchiopexy	90	\$1,551		
55550		Laparo ligate spermatic vein	90	\$874		
55870		Electroejaculation	0	\$357		
58550		Laparo-asst vag hysterectomy	10	\$1,867		
58555		Hysteroscopy, dx, sep proc	0	\$633		
58559		Hysteroscopy, lysis...	0	\$727		
58560		Hysteroscopy, resect septum	0	\$820		
58561		Hysteroscopy, remove myoma	0	\$1,160		
58660		Laparoscopy, lysis...	90	\$1,421		
58661		Laparoscopy, remove adnexa	10	\$1,362		
58662		Laparoscopy, excise lesions	90	\$1,491		
58670		Laparoscopy, tubal cautery	90	\$772		
58671		Laparoscopy, tubal block.	90	\$772		
58672		Laparoscopy, fimbrioplasty	90	\$1,558		
58673		Laparoscopy, salpingostomy	90	\$1,692		
58970		Retrieval of oocyte	0	\$447		
60650		Laparoscopy adrenalectomy		\$2,465		
61530		Removal of brain lesion	90	\$6,260		
61556		Incise skull/sutures	90	\$3,555		
61557		Incise skull/sutures	90	\$3,509		
61558		Excision of skull/sutures	90	\$3,917		

State of Louisiana Office of Workers' Compensation Schedule of Maximum Allowances for Medical Services						
CPT Code	Modifier	Description	Global Days	Maximum Amount	Non-Facility Maximum Amount	Facility Maximum Amount
61559		Excision of skull/sutures	90	\$3,786		
61563		Excision of skull tumor	90	\$4,128		
61564		Excision of skull tumor	90	\$5,016		
61886		Implant neurostim arrays	90	\$1,778		
62115		Reduction of skull defect	90	\$2,611		
62116		Reduction of skull defect	90	\$3,699		
62117		Reduction of skull defect	90	\$3,234		
62120		Repair skull cavity lesion	90	\$3,564		
62263		Lysis epidural adhesions	0		\$1,462	\$721
62318		Inject spine w/cath, c t	0	\$530		
63700		Repair of spinal herniation	90	\$2,712		
63702		Repair of spinal herniation	90	\$2,968		
63704		Repair of spinal herniation	90	\$3,443		
63706		Repair of spinal herniation	90	\$3,830		
64872		Subsequent repair of nerve		\$248		
64874		Repair and revise nerve		\$351		
64876		Repair nerve; shorten bone		\$379		
74300		X-ray bile ducts, pancreas		\$47		
76873		Echograp trans r, pros study		358		
76873	26	Echograp trans r, pros study		\$157		
76873	TC	Echograp trans r, pros study		\$200		
77427		Radiation tx management, x5		\$366		
78456		Acute venous thrombus image		\$797		
78456	26	Acute venous thrombus image		\$100		
78456	TC	Acute venous thrombus		\$697		
78459		Heart muscle imaging (PET)		BR		
78608		Brain imaging (pet)		\$145		
78609		Brain imaging (pet)		\$156		
79300		Interstitial nuclear therapy		BR		
84181		Western blot test		\$40		
84182		Protein, western blot		\$37		
88362		Nerve teasing preparations		\$635		
88362	26	Nerve teasing preparations		\$224		
88362	TC	Nerve teasing preparations		\$412		
88371	26	Protein, western blot		\$39		
88372	26	Protein analysis w/pro		\$33		
90471		Immunization admin....		\$51		
90472		Immunization admin, each add		\$26		
92551		Pure tone hearing test, air		\$24		
93660		Tilt table evaluation	0	\$424		
93660	TC	Tilt table evaluation	0	\$188		
93784		Ambulatory bp monitoring		\$112		
93786		Ambulatory bp recording		\$62		
93788		Ambulatory bp analysis		\$11		
93790		Review/report bp recording		\$38		
95144		Antigen therapy services	0		\$26	\$7
95170		Antigen therapy services	0	\$20		
96570		Photodynamic tx, 30 min		\$118		
96571		Photodynamic tx, addl 15 min		\$54		
96913		Photochemotherapy, uv-a or b		\$266		
97545		Work hardening, initial 2 hours		\$88		
97546		Work hardening add-on, each additional 60 minutes, up to 6 additional hours		\$44		
99173		Visual screening test		\$6		
99360		Physician standby services		\$127		
99420		Health risk assessment test		\$22		

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1034.2.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers Compensation Administration, LR 19:54 (January 1993), repromulgated LR 19:212 (February 1993), amended LR 20:1299 (November 1994), amended by the Workforce Commission, Office of Workers' Compensation, LR 39:

Family Impact Statement

Implementation of this proposed Rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on any family formation, stability, and autonomy. This proposed Rule shall not have any impact on the six criteria set out in R.S. 49:972(D).

Poverty Impact Statement

Implementation of this proposed Rule should not have any known or foreseeable impact on poverty as defined by R.S. 49:973.

Small Business Statement

The impact of the proposed Rule on small business has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small business as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

Interested parties may submit data, views, arguments, information or comments on the proposed amendment in writing to the Louisiana Workforce Commission, Office of Workers' Compensation, P.O. Box 94040, Baton Rouge, LA 70804-9040, Attention: Director, Office of Workers' Compensation Administration. Written comments must be submitted and received by the department within 20 days from the publication of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument or public hearing must be made in writing and received by the department within 20 days of the publication of this notice.

Public Hearing

A public hearing will be held on Friday, April 26, 2013 at 9:30 a.m. at the LWC Training Center, 2155 Fuqua St., Baton Rouge, LA 70802.

Curt Eysink
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Workers' Compensation Medical Reimbursement Schedule

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

According to the agencies, the proposed rule does not alter the medical procedures currently covered under workers' compensation, but merely updates the Current Procedural Terminology (CPT) and Healthcare Common Procedure Coding System (HCPCS) codes in order to be consistent with the American Medical Association (AMA). The revision will add codes that are currently not reflected in the Louisiana

Workers' Compensation Fee Schedule, and remove all obsolete CPT/HCPCS codes. The revisions will also include site of service differentials for new and updated CPT Codes where applicable. Implementation of this proposed fee schedule update will allow for more accurate coding by providers and carriers/self-insured employers but should not impact those receiving medical procedures under workers' compensation. The Legislative Fiscal Office cannot confirm the comparability of medical procedures under the rule proposed with procedures under the current rule.

The proposed rule change will have no impact on state or local government expenditures. All implementation costs associated with the rule change have been factored into the existing budget. The Division of Administration indicates that the proposed rule will have no significant fiscal impact on the Office of Risk Management due to administrative costs. An Office of Risk Management (ORM) analysis found that applying the new codes to the claim experience of the second half of FY 12 would result in an annual increase of \$229,000 which is a negligible (<1%) impact on payments.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated revenue impact on state or local government units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The current fee schedule lacks codes for certain workers' compensation medical procedures. As a result, providers must search out and use the code which would be closest to the actual procedure. The code the providers currently use may be less accurate for the carriers/self-insured employers than when a more appropriate code is used. However, using a more specific code could impact workers' compensation costs, depending on whether the true code is related to a cheaper or more expensive medical procedure. Without experience, there is no way to definitively determine whether workers' compensation costs will be higher or lower due to the proposed rule, especially in light of other factors that will simultaneously change within the marketplace and the workers' situations. According to the LWC, implementation of the proposed fee schedule update will provide for a more accurate account of what services were provided and allow billings according to a more precise medical determination.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated direct effect on competition and employment.

Wes Hathaway
Director
1304#019

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

Administrative Code Updates

CUMULATIVE: JANUARY - MARCH 2013

LAC Title	Part #.Section #	Action	Location:		LAC Title	Part #.Section #	Action	Location:		
			Month	LR 39 Page #				Month	LR 39 Page #	
7	XXV.101,103,111,113,117,121,123,141	Amended	Feb.	300	46	LIII.2901,2909,2911,2913,2917,2921,2925	Amended	Feb.	314	
	XXV.145,151,153,157	Amended	Feb.	300		LIII.2931	Repealed	Feb.	314	
	XXV.155,159,165,167	Adopted	Feb.	300		LXIII.601,603	Amended	Feb.	311	
25	VII.103,107,301,305,501,2303,3101,3103	Amended	Jan.	67	50	LXVII.10309	Amended	Feb.	310	
	VII.105,303,503,1307,1309,2705,4317,5307	Repealed	Jan.	67		LXVII.10701	Adopted	Feb.	310	
	VII.3109,4103,4105,4301,4303,4305,4307	Amended	Jan.	67		XCI.313	Amended	Jan.	91	
	VII.4309,4311,4501,4503,4507,5101,5103	Amended	Jan.	67		XCI.1101	Adopted	Jan.	91	
	VII.5105,5107,5109,5111,5303,5305,5307	Amended	Jan.	67		I.3503,3505,3507,3509	Amended	Jan.	92	
	VII.5113,5115	Adopted	Jan.	67		I.3507	Repromulgated	Feb.	318	
	VII.5311,5313,5315,5317	Repealed	Jan.	67		I.8341,8345,8347,8349	Amended	Mar.	509	
						I.12501	Amended	Mar.	505	
						V.915,959	Amended	Jan.	94	
						V.959	Amended	Feb.	323	
28	I.501	Repromulgated	Feb.	307	50	V.963	Repromulgated	Jan.	95	
	IV.301	Amended	Feb.	308		V.1301,1303,1305,1307,1309	Adopted	Feb.	323	
	IV.703	Amended	Mar.	481		V.2709	Amended	Mar.	505	
	IX.103,105	Amended	Jan.	84		V.5109	Adopted	Feb.	327	
	LXXIX.107	Amended	Feb.	306		VII.32965,32967,32969	Adopted	Feb.	325	
	LXXIX.109,110,111,113	Repealed	Feb.	306		IX.8305	Amended	Jan.	96	
	LXXIX.1103	Adopted	Mar.	480		IX.8505	Adopted	Jan.	96	
	LXXXIII.301,409,517,613	Amended	Feb.	304		IX.8701	Repealed	Jan.	96	
	LXXXIII.612	Adopted	Feb.	304		IX.15143	Amended	Jan.	96	
	LXXXIII.1102	Amended	Feb.	304		XI.3501	Amended	Jan.	93	
	LXXXIII.3501,3505	Adopted	Mar.	472		XI.3501	Amended	Mar.	506	
	LXXXIII.3503,3507	Amended	Mar.	472		XI.7503	Amended	Feb.	316	
	CXI.319,1809,1810,2201,2203,2205,2207	Adopted	Jan.	73		XIII.121	Adopted	Mar.	509	
	CXI.701,1701,1813,1817,1825	Amended	Jan.	73		XV.6501	Adopted	Feb.	318	
	CXI.1804,1805,1806,1807,1808	Repromulgated	Jan.	73		XV.6701,6703,6705	Repealed	Feb.	318	
	CXI.2400,2409,2411,2412,2413,2415	Adopted	Jan.	73		XV.9113	Amended	Mar.	505	
	CXIII.303,307,309,1905,3101	Amended	Jan.	80		XV.9701,9703	Adopted	Jan.	93	
	CXIII.1907	Adopted	Jan.	80		XV.10701	Amended	Jan.	97	
	CXV.1301	Amended	Mar.	476		XIX.4329	Amended	Jan.	95	
	CXV.1302,1303	Adopted	Mar.	476		XXI.701	Adopted	Mar.	509	
	CXV.1304,1305,1306	Repromulgated	Mar.	476		XXI.2915	Amended	Mar.	507	
	CXXXIX.301	Amended	Mar.	473		XXI.8105,8301,8305,8307,8311,8313,8315	Amended	Feb.	319	
	CXXXIX.401,403,405,407,409,411,417,419	Adopted	Mar.	473		XXI.8302	Adopted	Feb.	319	
	CXXXIX.421,423,521,707	Adopted	Mar.	473		XXI.8321,8323,8501,8701,8901,8903,9301	Amended	Feb.	319	
	CXXXIX.512	Amended	Jan.	81		XXI.9303,9501,9503	Amended	Feb.	319	
	CXLV.505	Amended	Jan.	82		XXI.9501	Amended	Mar.	508	
	CLIII.1301,1303,1305	Adopted	Jan.	82		XXI.9501	Amended	Mar.	508	
						XXI.11301	Amended	Mar.	507	
						XXII.2701	Amended	Mar.	506	
						XXIII.1301	Amended	Feb.	316	
						XXV.701	Amended	Feb.	316	
						XXXIII.501	Amended	Feb.	317	
				XXXIII.2701	Amended	Feb.	317			
40	I.305	Amended	Feb.	331	51	XIV.411	Repromulgated	Mar.	511	
	I.306	Adopted	Feb.	331						
42	XI.2415	Amended	Feb.	329	55	III.110	Adopted	Mar.	516	
						III.155	Repromulgated	Jan.	98	
43	I.723,727	Amended	Feb.	327	56	III.2301,2303,2305,2307	Adopted	Jan.	117	
	I.728	Adopted	Feb.	327		V.1107	Amended	Mar.	486	
	XIX.103	Amended	Mar.	515						
46	I.1303	Amended	Mar.	483	61	I.115,117	Adopted	Jan.	120	
	I.1905,1907	Adopted	Mar.	483		I.401,405,407	Amended	Jan.	119	
	V.309,1507,1509,1511,1703	Adopted	Mar.	498						
	V.1501,1503,1505,1701,1705	Amended	Mar.	498		I.1516	Adopted	Jan.	103	
	XXXIII.103	Repromulgated	Jan.	86		I.1520	Amended	Jan.	103	
	XXXIII.306,307,706,707	Amended	Jan.	87		I.1520	Repromulgated	Feb.	329	
	XXXIII.415,1505,1506,1509,1511,1513	Amended	Jan.	89		I.1907	Amended	Jan.	99	
	XXXIII.1613,1709,1809	Amended	Jan.	86		III.2501	Amended	Jan.	102	
	XLVII.3707	Amended	Mar.	501		III.2503	Amended	Jan.	99	
	LIII.1103	Amended	Feb.	315		V.101,303,304,703,907,1103,1307,1503,2503	Amended	Mar.	487	
	LIII.1139,1143	Amended	Feb.	313						
	LIII.1705	Amended	Feb.	313						
	LIII.1713,2743	Amended	Feb.	312		67	III.5597	Adopted	Jan.	67
	LIII.1727	Repealed	Feb.	313			III.7302,7355	Amended	Jan.	66
	LIII.2401,2403,2405,2407	Adopted	Mar.	501			III.7304,7325,7357,7373	Amended	Mar.	470
	LIII.2705	Amended	Feb.	312			V.6704	Adopted	Jan.	66
				V.6953,7103,7303	Amended		Jan.	66		

LAC Title	Part #.Section #	Action	Location:			LAC Title	Part #.Section #	Action	Location:	
			Month	LR 39 Page #	LAC Title				Month	LR 39 Page #
70	I.701,703,705,707,709,710,711,713	Repealed	Jan.	117	73	I.303	Amended	Jan.	98	
	IX.301,313,315	Amended	Jan.	104						
	IX.303,305,307,309,311,317,319,321,323	Repromulgated	Jan.	104	76	V.301	Amended	Jan.	120	
	IX.325,327,329,331,333,335,337	Repromulgated	Jan.	104						
	IX.901,903,905,907,909,911,913,915,917	Repealed	Jan.	104	VII.335	VII.199	Amended	Jan.	120	
	IX.919,921,923,925,927,929,931,933,935	Repealed	Jan.	104						
	IX.937	Repealed	Jan.	104						VII.535

Potpourri

POTPOURRI

Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences

Annual Quarantine Listing Plant Protection and Quarantine

In accordance with LAC 7:XV.107 and 109, we are hereby publishing the annual quarantine.

1.0 Sweetpotato Weevil (*Cylas formicarius elegantulus* Sum)

(a) In the United States: the states of Alabama, California, Florida, Georgia, Mississippi, North Carolina, South Carolina, Texas and any other state found to have the sweetpotato weevil.

(b) In the State of Louisiana:

1) The entire parishes of: Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Cameron, DeSoto, East Baton Rouge, East Feliciana, Evangeline, Grant, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Natchitoches, Orleans, Plaquemines, Pointe Coupee, Rapides, Red River, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Vernon, Washington, Webster, West Baton Rouge, West Feliciana.

2) The property located at the following coordinates: 32.457650, -91.572820; and any properties within a 300-yard radius of these coordinates.

2.0 Pink Bollworm (*Pectinophora gossypiella* Saunders)

Pink bollworm quarantined areas are divided into generally infested and/or suppressive areas as described by USDA-PPQ.

Arizona

(1) Generally infested area: the entire state.

California

(1) Generally infested area: The entire counties of: Imperial, Inyo, Los Angeles, Orange, Riverside, San Bernardino, and San Diego.

(2) Suppressive area: The entire counties of: Fresno, Kern, Kings, Madera, Merced, San Benito, and Tulare.

New Mexico

(1) Generally infested area: The entire state.

Texas

(1) Generally infested area: The entire state.

3.0 Phytophagous Snails

The states of Arizona and California.

4.0 Sugarcane Pests and Diseases

All states outside of Louisiana.

5.0 Lethal Yellowing

The state of Florida.

6.0 Texas Phoenix Decline

The states of Texas and Florida.

7.0 Tristeza, Xyloporosis, Psorosis, Exocortis.

All citrus growing areas of the United States.

8.0 Burrowing Nematode (*Radopholus similis*)

The States of Florida and Hawaii and the Commonwealth of Puerto Rico.

9.0 Oak Wilt (*Ceratocystis fagacearum*)

Arkansas

Infected counties: Baxter, Benton, Boone, Carroll, Clay, Craighead, Crawford, Franklin, Fulton, Independence, Izard, Johnson, Lawrence, Logan, Madison, Marion, Mississippi, Nevada, Newton, Poinsett, Pope, Randolph, Scott, Searcy, Sharp, Stone, Washington, and Yell.

Illinois

Entire state.

Indiana

Entire state.

Iowa

Entire state.

Kansas

Infected counties: Anderson, Atchison, Cherokee, Doniphan, Douglas, Franklin, Jackson, Jefferson, Johnson, Leavenworth, Linn, Miami, Neosho, Pottawatomie, Shawnee, and Wyandotte.

Kentucky

Infected counties: Adair, Allen, Ballard, Bath, Bell, Boyd, Breathitt, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carter, Casey, Christian, Clay, Clinton, Cumberland, Daviess, Edmonson, Elliott, Estill, Fleming, Floyd, Graves, Grayson, Green, Greenup, Hancock, Hardin, Harlan, Hart, Henderson,

Hopkins, Jefferson, Johnson, Knott, Knox, Lawrence, Lee, Leslie, Letcher, Lewis, Logan, McCracken, McLean, Magoffin, Marshall, Martin, Menifee, Metcalfe, Montgomery, Morgan, Muhlenberg, Nelson, Ohio, Oldham, Owsley, Perry, Pike, Powell, Pulaski, Rowan, Russell, Taylor, Todd, Trigg, Union, Warren, Wayne, and Webster.

Maryland

Infected Counties: Allegany, Frederick, Garrett, and Washington.

Michigan

Infected counties: Barry, Barrien, Calhoun, Cass, Clare, Clinton, Grand Traverse, Kalamazoo, Kent, Lake, Livingston, Manistee, Missaukee, Muskegon, Oakland, Roscommon, St. Joseph, Van Buren, Washtenaw, Wyne, and Menominee.

Minnesota

Infected counties: Anoka, Aitkin, Blue Earth, Carver, Cass, Chicago, Crow Wing, Dakota, Dodge, Fillmore, Freeborn, Goodhue, Hennepin, Houston, Le Sueur, McLeod, Mille Lacs, Morrison, Mower, Nicollet, Olmsted, Ramsey, Rice, Scott, Sherburne, Sibley, Steele, Wabasha, Waseca, Washington, Winona, and Wright.

Missouri

Entire state.

Nebraska

Infected counties: Cass, Douglas, Nemaha, Otoe, Richardson, and Sarpy.

North Carolina

Infected counties: Buncombe, Burke, Haywood, Jackson, Lenoir, Macon, Madison, and Swain.

Ohio

Entire state.

Oklahoma

Infected counties: Adair, Cherokee, Craig, Delaware, Haskell, Latimer, LeFlore, Mayes, McCurtain, McIntosh, Ottawa, Pittsburg, Rogers, Sequoyah, and Wagoner.

Pennsylvania

Infected counties: Adams, Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Centre, Clarion, Clinton, Cumberland, Erie, Fayette, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, Mifflin, Perry, Somerset, Venango, Washington, and Westmoreland.

South Carolina

Infected counties: Chesterfield, Kershaw, Lancaster, Lee, and Richland.

Tennessee

Infected Counties: Blount, Carter, Cocke, Cumberland, Grainger, Greene, Hamblen, Hancock, Hardeman, Hawkins, Jefferson, Knox, Lincoln, Loudon, Montgomery, Rhea, Roane, Robertson, Sevier, Sullivan, Union, Washington, and White.

Texas

Infected counties: Bandera, Bastrop, Bexar, Blanco, Basque, Burnett, Dallas, Erath, Fayette, Gillespie, Hamilton, Kendall, Kerr, Lampasas, Lavaca, McLennan, Midland, Tarrant, Travis, Williamson.

Virginia

Infected counties: Aleghany, Augusta, Bath, Botetoust, Clarke, Frederick, Giles, Highland, Lee, Loudoun, Montgomery, Page, Rockbridge, Rockingham, Scott, Shenandoah, Smyth, Warren, Washington, Wise, and Wythe.

West Virginia

Infected counties: all counties except Tucker and Webster.

Wisconsin

Infected counties: Adams, Brown, Buffalo, Chippewa, Clark, Columbia, Crawford, Dane, Dodge, Dunn, Eau Claire, Fond du Lac, Grant, Green, Green Lake, Iowa, Jackson, Jefferson, Juneau, Kenosha, La Crosse, Lafayette, Lincoln, Marquette, Milwaukee, Monroe, Oconto, Outagamie, Ozaukee, Pepin, Pierce, Polk, Portage, Racine, Richland, Rock, St. Croix, Sauk, Shawano, Trempealeau, Vernon, Walworth, Washington, Waukesha, Waupaca, Waushara, Winnebago, and Wood.

10.0 Phony Peach

Alabama

Entire state.

Arkansas

Counties of Arkansas, Ashley, Bradley, Chicot, Columbia, Crittendon, Cross, Desha, Drew, Hempstead, Howard, Jefferson, Lafayette, Lee, Lincoln, Little River, Miller, Monroe, Nevada, Phillips, Pike, Poinsett, St. Francis, Sevier, Union, and Woodruff.

Florida

Entire state.

Georgia

Entire state.

Kentucky

County of McCracken.

Louisiana

Parishes of Bienville, Bossier, Caddo, Claiborne, DeSoto, Jackson, Lincoln, Morehouse, Natchitoches, Ouachita, Red River and Union.

Mississippi

Entire state.

Missouri

County of Dunklin.

North Carolina

Counties of Anson, Cumberland, Gaston, Hoke, Polk and Rutherford.

South Carolina

Counties of Aiken, Allendale, Bamberg, Barnwell, Cherokee, Chesterfield, Edgefield, Greenville, Lancaster, Laurens, Lexington, Marlboro, Orangeburg, Richland, Saluda, Spartanburg, Sumter, and York.

Tennessee

Counties of Chester, Crockett, Dyer, Fayette, Hardman, Hardin, Lake, Lauderdale, McNairy, Madison, and Weakley.

Texas

Counties of Anderson, Bexar, Brazos, Cherokee, Freestone, Limestone, McLennan, Milan, Rusk, San Augustine, Smith, and Upshur.

11.0 Citrus Canker (*Xanthomonas citri* subsp. *citri*)

Any areas designated as quarantined under the Federal Citrus Canker quarantine 7 CFR 301.75 et seq.

12.0 Pine Shoot Beetle [*Tomicus piniperda* (L.)]

Any areas designated as quarantined under the Federal Pine Shoot Beetle quarantine 7 CFR 301.50 et seq.

13.0 Citrus Greening [*Candidatus Liberibacter asiaticus*]

Louisiana

Infested parishes: Orleans and Washington.

Any other areas or states designated as infested under the Federal Citrus Greening and Asian Citrus Psyllid quarantine 7 CFR 301.76 et seq.

14.0 Asian Citrus Psyllid [*Diaphorina citri* Kuwayama]

Louisiana

Infested parishes: Jefferson, Orleans, Lafourche, Plaquemines, St. Bernard, St. Charles, St. James, St. Tammany, Tangipahoa and Terrebonne.

Any other areas or states designated as infested under the Federal Citrus Greening and Asian Citrus Psyllid quarantine 7 CFR 301.76 et seq.

Date: April 4, 2013

Approved by:

Mike Strain DVM
Commissioner

1304#033

POTPOURRI

**Department of Health and Hospitals
Board of Pharmacy**

**Public Hearing—Substantive Changes to Proposed Rule
Compounding for Prescriber’s Use**

The Board of Pharmacy (“board”) published a Notice of Intent to promulgate amendments to LAC 46:LIII.Chapter 25 in the January 20, 2013 edition of the *Louisiana Register* (LR 39:187-189). The notice solicited comments and testimony. As a result of its analysis of the comments and testimony received, the board proposes to amend the original proposal by replacing the original language that would have repealed the authority of a pharmacy to compound any drug products for practitioner administration with language that will limit the authority of the pharmacy to compound drug products for practitioner administration up to ten percent of the total number of drug dosage units dispensed and distributed by the pharmacy on an annual basis.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LIII. Pharmacists

Chapter 25. Prescriptions, Drugs, and Devices

Subchapter C. Compounding of Drugs

§2535. General Standards

A - C. ...

D. Compounding for Prescriber’s Use. Pharmacists may prepare practitioner administered compounds for a prescriber’s use with the following requirements:

1 - 3. ...

4. A pharmacy may prepare such products not to exceed ten percent of the total number of drug dosage units dispensed and distributed by the pharmacy on an annual basis.

E. ...

F. Compounding Commercial Products Not Available

1. A pharmacy may prepare a copy of a commercial product when that product is not available as evidenced by either of the following:

a. products appearing on a website maintained by the federal Food and Drug Administration (FDA) and/or the American Society of Health-System Pharmacists (ASHP);

b. products temporarily unavailable from distributors, as documented by invoice or other communication from the distributor.

G. Labeling of Compounded Products.

1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 23:1316 (October 1997), amended LR 29:2105 (October 2003), effective January 1, 2004, amended LR 39:

Public Comments

Interested persons may submit written comments to Malcolm J Broussard, Executive Director, Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. He is responsible for responding to inquiries regarding these substantive amendments to the original proposal.

Public Hearing

A public hearing on these proposed amendments is scheduled for Thursday, May 30, 2013 at 1 p.m. in the board office. At that time, all interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. The deadline for the receipt of all comments is 4 p.m. that same day.

Malcolm J. Broussard
Executive Director

1304#045

POTPOURRI

**Department of Natural Resources
Office of Conservation**

Legal Notice—Docket No. Env 2013-01

Notice is hereby given that the Commissioner of Conservation will conduct a hearing at 6:00 p.m., Thursday, May 23, 2013, at the DeSoto Parish Police Jury Building, located at 101 Franklin Street, Police Jury Meeting Room, Mansfield, Louisiana.

At such hearing, the Commissioner, or his designated representative, will hear testimony relative to the application of Stallion Oilfield Services LTD., P.O. Box 390, Homer, Louisiana 71040. The applicant requests approval from the Office of Conservation to construct and operate a commercial deep well injection waste disposal facility for disposal of exploration & production waste (E&P Waste) fluids located in Section 32, Township 12 North, Range 14 West in DeSoto Parish. In addition, the applicant also requests approval at the same location to treat E&P Waste fluids for the purposes of recycling such fluids for use as frac water supply.

The application is available for inspection by contacting Mr. Stephen Olivier, Office of Conservation, Environmental Division, Eighth Floor of the LaSalle Office Building, 617 North 3rd Street, Baton Rouge, Louisiana. Copies of the application will be available for review at the DeSoto Parish Police Jury or the Public Library in Mansfield, Louisiana no later than 30 days prior to the hearing date. Verbal information may be received by calling Mr. Olivier at (225) 342-7394.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing. Written comments which will not be presented at the hearing must be received no later than 4:30 p.m., Thursday, May 30, 2013, at the Baton Rouge Office. Comments should be directed to:

Office of Conservation
 Environmental Division
 P.O. Box 94275
 Baton Rouge, Louisiana 70804
 Re: Docket No. ENV 2013-01
 Commercial Facility Well Application
 DeSoto Parish

BY ORDER OF:
 James H. Welsh
 Commissioner of Conservation

Baton Rouge, Louisiana
 March 25, 2013

1304#013

POTPOURRI

**Department of Natural Resources
 Office of Conservation**

Public Hearing—Substantive Changes to Proposed Rule;
 Hydraulic Fracture Stimulation Operations
 (LAC 43:XIX.118)

The board published a Notice of Intent to promulgate §118, Hydraulic Fracture Stimulation Operations in the February 20, 2013 edition of the *Louisiana Register* (LR 39:388-389). The notice solicited comments and testimony. As a result of its analysis of the comments and testimony received, the board proposes to amend certain portions of the proposed Rule. Within Subsection C.2.a, Conservation proposes to add language to consistent with Act 812 of the 2012 Regular Session by requiring the operator to provide contact information of the entity claiming the protection.

Taken together, all of these proposed amendments will closely align the proposed Rule with Act 812 of the 2012 Regular Session. No fiscal or economic impact will result from the amendments proposed in this notice.

Title 43

NATURAL RESOURCES

Part XIX. Office of Conservation—General Operations

Subpart 1. Statewide Order No. 29-B

Chapter 1. General Provisions

§118. Hydraulic Fracture Stimulation Operations

A. - C.1. ...

2.a. Notwithstanding Subparagraph d, if the specific identity of a chemical ingredient and the chemical ingredient's associated CAS number are claimed to be trade secret, or have been finally determined to be entitled to protection as a trade secret under the criteria cited in 42 USC 11042(a)(2), and specifically enumerated at 42 USC 11042(b), the entity entitled to make such a claim may withhold the specific identity of the chemical ingredient and the chemical ingredients associated CAS number from the list required by Subparagraph d. If the entity entitled to make such a claim elects to withhold that information, the operator must report:

i. - ii. ...

iii. the contact information of the entity claiming trade secret protection.

2.b. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 37:3064 (October 2011), amended LR 37:3064, LR 39:

Public Hearing

In accordance with the provisions of the Administrative Procedure Act, specifically at R.S. 49:968(H)(2), the Commissioner of Conservation gives notice of a public hearing to receive additional comments and testimony on these substantive amendments to the proposed Rule. The hearing will be held at 10 a.m. on Thursday, May 30, in the LaBelle Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA. All interested parties will be afforded the opportunity to submit data, views, or arguments, orally or in writing at the public hearing in accordance with R.S. 49:953. Written comments will be accepted until 4:30 p.m., June 6, 2013, at Office of Conservation, P.O. Box 94275, Baton Rouge, LA, 70804-9275; or Office of Conservation, Executive Division, 617 North Third St., Baton Rouge, LA 70802. All inquiries should be directed to Tyler Gray at the above addresses or by phone to (225) 342-5570. Please reference Engineering Docket No. 13-226.

James H. Welsh
 Commissioner

1304#039

POTPOURRI

**Department of Natural Resources
 Office of Conservation**

Orphaned Oilfield Sites

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, La. R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	District	Well Name	Well Number	Serial Number
Sante Fe Minerals	Cheneyville	L	Weil Co Inc Swd	004	23179(30)
Sante Fe Minerals	Cheneyville	L	Weil Company Inc Swd	010	23798(30)
T. J. Operating Co., Inc.	Cheneyville	L	Weil Co Inc A	004	20718(30)
Lusk & Lusk, Inc.	Big Creek	M	Martin	001	58164
F. J. Hall, Inc.	Sligo	M	Elizabeth Pettet Et Al	004	116726
Barbour Oil Company	Wildcat-No La Monroe Dist	M	Baker	001	10448
Parnes Oil Company	Port Barre	L	Haas & Hirsh Swd	005	31583

Operator	Field	District	Well Name	Well Number	Serial Number
Muslow And Parker	Caddo Pine Island	S	Earhardt B	001	51017
Amax Petroleum Corporation	Opelousas	L	O L Bacque	001	76112(30)
John F Mitchell Et Al	Caddo Pine Island	S	Nesbit	001	51528
Bateman Drg. Co & Freeport Supleur Co	Charenton	L	E D Viguerie Co Inc	001	37217
Tyler Production, LLC	Brabston	M	Yakey	002	174204
Tyler Production, LLC	Brabston	M	Yakey Swd	003	178106
Tyler Production, LLC	Cross Bayou	M	Humble-Tensas Delta	T044	134417
Tyler Production, LLC	Cross Bayou	M	Humble-Tensas Delta	T-60	136766
Tyler Production, LLC	Cross Bayou	M	Tdl-Wagner Swd	001	973155
Tyler Production, LLC	Esperance Point	M	Junkin	004	167916
Tyler Production, LLC	Esperance Point	M	Junkin	005	177849

James H. Welsh
Commissioner

1304#020

POTPOURRI

**Department of Natural Resources
Office of the Secretary
Fishermen's Gear Compensation Fund**

Underwater Obstructions—Latitude/Longitude Coordinates

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 4 claims in the amount of \$15,930.09 were received for payment during the period March 1, 2013 - March 31, 2013

There were 3 paid and 1 denied.

Latitude/Longitude Coordinates, in Degree Decimal Minutes, of reported underwater obstructions are:

2859.897	8907.401	Plaquemines
2915.003	9044.343	Terrebonne
2927.629	8959.228	Jefferson
2935.333	9009.155	Lafourche

A list of claimants and amounts paid can be obtained from Gwendolyn Thomas, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225)342-9388.

Stephen Chustz
Secretary

1304#050

POTPOURRI

**Workforce Commission
Office of Unemployment Insurance**

**Public Hearing—Substantive Changes to Proposed Rule
Appealed Claims for Board of Review
(LAC 40:IV.109 and 113)**

The Louisiana Workforce Commission(LWC) published a Notice of Intent to promulgate §§109 and 113, Appeals to the Appeals Tribunal and Board of Review, and Postponements, Continuances, Reopenings, and Rehearings in the February 20, 2013 edition of the *Louisiana Register* (LR 39:420). The notice solicited comments and testimony. As a result of its analysis of the comments and testimony received, LWC proposes to amend certain portions of the proposed Rules. §109 receive one comment and after careful consideration will not be changed. However, in light of the comments received §113 will be amended to reflect the purpose of the original notice of intent and extend the fifteen minute grace period to telephone hearings and as well as in person hearings.

Taken together, all of these proposed amendments will closely align the proposed Rule with the proposed Rule on the same topic as published by the LWC in the February edition of the *Louisiana Register* (LR 39:420). The alignment of these Rules will permit the same grace period to both in person and telephone hearing makings. No fiscal or economic impact will result from the amendments proposed in this notice.

Title 40

LABOR AND EMPLOYMENT

Part IV. Employment Security

Subpart 1. Board of Review

Chapter 1. Employment and Security Law

§109. Appeals to the Appeals Tribunal and Board of Review

A. The party appealing from the agency's initial determination shall file a written appeal, setting forth information required therein within 15 days after date notification was given or was mailed to his last known address.

B. It is hereby further provided that any communication written by claimant or employer to the Louisiana Workforce Commission or the board disputing the determination or appeal decision may be accepted as an appeal, provided said written communication is received by any office of the Louisiana Workforce Commission or by the board within 15 days after notification, was given or was mailed to his last known address.

C. Legal holidays and days on which the Louisiana Workforce Commission is closed shall not serve to extend the delay periods specified in R.S. 23:1629 and R.S. 23:1630.

D. Proof of the timeliness of mailing a request for appeal shall be shown only by the date indicated on the electronic transmission, by a legible official United States postmark, or by official receipt or certificate from the United States Postal

Service made at the time of mailing which indicates the date thereof. In the event that the date of the electronic transmission or postmark is absent, illegible, or manifestly incorrect, the date that the request is received in the Appeals Tribunal or Board of Review office shall determine whether the appeal was timely filed.

AUTHORITY NOTE: Promulgated in accordance with Act 97 of 1936 as amended.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:485 (June 1989), amended by the Department of Employment and Training, Board of Review, LR 17:36 (January 1991), amended by the Workforce Commission, Office of Unemployment Insurance, LR 39:

Chapter 1. Employment and Security Law

§113. Postponements, Continuances, Reopenings, and Rehearings

A. Continuances or Postponements

1. A scheduled hearing may be postponed or continued by the administrative law judge for good cause, either upon his own motion or upon a showing of good cause by written request of a party, submitted to the administrative law judge whose name and address appear on the notice of hearing. Written notice of the time and place of a postponed or continued hearing shall be given to the parties or their named representatives.

2. The administrative law judge shall provide written denial to any party whose written request for postponement or continuance is received after his decision has been mailed. The requesting party shall also be provided written notice of his right either to file written request of a reopening of hearing before the administrative law judge within seven days from the date of mailing of the decision on the claim or to file further appeal to the Board of Review under §109 and §125. The untimely request for postponement or continuance shall not itself be treated as an appeal of the decision to the Board of Review. An appeal may also be timely filed by a party before the Board of Review under §109 and §125 after a written response to the request for reopening is issued by the administrative law judge.

3. Any such request of a party and response of the administrative law judge shall be incorporated in the case file.

B. Non-Appearance of Appellant. If the appellant, who is the party who files the appeal before the Appeals Tribunal, fails to appear or fails to be available to participate in a telephone hearing within 15 minutes after the scheduled hearing time, the administrative law judge shall order the appellant in default and issue a dismissal of appeal. In such event, the agency determination shall become the final decision. Written notice of default of the appellant and dismissal of the appeal shall be mailed to the parties. The appellant either may file a written request for reopening before the administrative law judge, with a showing of good cause, within seven days of the date of mailing of the dismissal decision or may file an appeal before the board of review under §109 and §125. If such appellant is denied a reopening by the administrative law judge, any such request shall be forwarded to the board of review as an appeal as of the date of the written request for reopening. If it is determined by the administrative law judge on reopening or by the board of review on appeal that the appellant has shown good cause for his nonappearance, the dismissal shall

be vacated and a new hearing on the merits shall be scheduled.

C. Non-Appearance or Late Appearance of Appellee. If the appellee, who is the party whose agency determination is being appealed by another party before the appeals tribunal, fails to appear at the scheduled hearing time of an in-person hearing, or fails to be available to receive the telephone call to participate in a scheduled telephone hearing at the scheduled hearing time, the administrative law judge shall proceed to conduct the hearing and issue a decision on the merits based upon the administrative record and any evidence and testimony presented by the appellant. The appellee may either file a written request for reopening before the administrative law judge, with a showing of good cause, within seven days of the date of mailing of the decision or may file an appeal before the board of review under §109 and §125. If such appellee is denied a reopening by the administrative law judge, any such request shall be forwarded to the board of review as an appeal as of the date of the written request for reopening. If it is determined by the administrative law judge on reopening or by the board of review on appeal that the appellee has shown good cause for his non-appearance, the decision shall be vacated, and a new hearing on the merits shall be scheduled.

D. Good Cause for Reopening or Rehearing

1. The administrative law judge or the board of review shall make a determination of good cause for failure to appear only if the written request for reopening or the appeal filed by the party contains a statement of the reason(s) for his failure to act in a timely manner and reasonably justifies a finding of good cause to excuse such failure.

2. To determine whether good cause has been shown in a request for reopening or in an appeal to excuse the failure of a party to appear, the administrative law judge and the board of review shall consider any relevant factors, including, but not limited to:

- a. reasonably prudent behavior;
- b. untimely receipt of notice;
- c. administrative error;
- d. reasons beyond control or avoidance;
- e. reasons unforeseen;
- f. timely effort to request continuance;
- g. physical incapacities;
- h. degree of untimeliness; or
- i. prejudice to parties.

3. Failure to provide timely notice of change or correction of address shall not establish good cause for failure to appear, unless the party satisfactorily demonstrates his reasonable belief in his request or appeal that such notice was not needed or had been provided.

4. The basis of any determination by the administrative law judge or the board of review relating to good cause must be provided in the written response or decision. The fulfillment of each of the above factors is not required in any such response or decision for the establishment of good cause for failure to appear.

5. A written request for reopening before the administrative law judge may be filed within seven days of the date of mailing of his decision or an appeal to the board of review may be filed under §109 and §125 by any party for admission of additional evidence upon the showing of good

cause that any such evidence is newly discovered or was unavailable or unknown at the time of the hearing.

E. Terminology. The term party or parties, as used in these rules, shall mean the claimant and the employer or any legal or designated representative thereof, including the administrator in those appeals in which he is specified as a party under R.S. 23:1629.

AUTHORITY NOTE: Promulgated in accordance with Act 97 of 1936 as amended.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:486 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:36 (January 1991), repromulgated by the Department of Labor, Office of Employment Security, Board of Review LR 23:76 (January 1997), amended by the Workforce Commission, Office of Unemployment Insurance, LR 39:

In accordance with the provisions of the Administrative Procedure Act, specifically at R.S. 49:968(H)(2), LWC gives notice of a public hearing to receive additional comments and testimony on these substantive amendments to the proposed Rule. The hearing will be held at 10 a.m. on May 30, 2013, at 10 a.m. at the LWC Training Center, 2155 Fuqua Street, Baton Rouge, LA 70802. At that time, all interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. Interested persons may submit written comments to Latisha Nixon-Jones, Executive Management Officer. The deadline for receipt of all written comments is May 10, 2013.

Curt Eysink
Executive Director

1304#101

POTPOURRI

Workforce Commission Office of Workers' Compensation

Public Hearing—Substantive Changes to Proposed
Rule; Benefits for Unemployment Insurance
(LAC 40:IV.Chapter 3)

The Louisiana Workforce Commission (LWC) published a Notice of Intent to promulgate §§ 301, 323, 324, 353, 357, 368, 369, and 371 in the February 20, 2013 edition of the *Louisiana Register* (LR 39:422). The notice solicited comments and testimony. As a result of its analysis of the comments and testimony received, LWC proposes to amend certain portions of the proposed Rules. Section 353 received three comments and after careful consideration will not be changed. However, in light of the comments received, §369.A.2 will be amended to reflect the Appeals Tribunal not the administrator is to receive the waiver for overpayment questionnaire. The Section is also being amended to reflect that the questionnaire shall be returned to the Appeals Tribunal prior to the hearing. Section 371 is also being amended to address a typographical error on the payment scale.

Taken together, all of these proposed amendments will closely align the current proposed Rule with original proposed Rule on the same topic as published by the LWC in the February edition of the *Louisiana Register* (LR 39:422). The alignment of these rules will create a more concise

reading of the Rule. No fiscal or economic impact will result from the amendments proposed in this notice.

Title 40

LABOR AND EMPLOYMENT

Part IV. Employment Security

Subpart 1. Board of Review

Chapter 3. Employment Security Law

§301. Authority.

A. By virtue of the authority vested in the administrator of the Louisiana Workforce Commission of the State of Louisiana by the Louisiana Employment Security Law, R.S. 23:1471-1713 (Act 97 of 1936), as amended, and in order to establish uniform procedure under said law, the following regulations have been and are adopted and prescribed and all other regulations now in effect are hereby rescinded, but remain in full force and effect relative to all matters arising prior to the effective date of the hereinafter prescribed and adopted regulations.

AUTHORITY NOTE: Promulgated in accordance with Act 97 of 1936 as amended.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:487 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:38 (January 1991), amended by the Workforce Commission, Office of Unemployment Insurance, LR 39:

§323. Separation Notices

A. Individual Separation Notices. Under Conditions Which May Disqualify. Whenever a worker is separated from his employment permanently or for an indefinite period or for an expected duration of 7 or more days, under conditions which may disqualify him for benefits pursuant to the provisions of R.S. 23:1601, his employer shall within three days after such separation give him, or if such delivery is impossible or impracticable, mail to his last known address a "Separation Notice Alleging Disqualification" on which the employer has entered the required information. Within the same period of time, the employer shall send a copy of such separation notice, certified by himself or his duly authorized agent, to the administrator.

B. Mass Separation Notices. In the event of a separation of 50 or more individuals by an employer for the same reason and about the same time, the employer shall notify the administrator of such separation. Upon receipt of such notice, the administrator shall make full investigation.

C. Labor Dispute Notices

1. In case of a separation due to a labor dispute, the employer shall within three days after such separation file with the administrator a notice setting forth the existence of such a dispute and the approximate number of workers affected.

2. Upon request by the administrator, such employer shall furnish the names of workers ordinarily attached to the department or the establishment where unemployment is alleged to be caused by a labor dispute.

AUTHORITY NOTE: Promulgated in accordance with Act 97 of 1936 as amended.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:489 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:40 (January 1991), amended by the Workforce Commission, Office of Unemployment Insurance, LR 39:

§324. Reply to Notice of Eligibility

A. When the employer or the employer's agent receives the notice specified by R.S. 23:1624 of a claimant's eligibility for benefits or other notice that an application for benefits has been made; the employer or employer's agent shall, within the time specified in the notice examine the notice against the claimant's record and shall reply to the notice. The reply shall either protest or indicate no known cause to protest a decision granting eligibility or otherwise shall inform the department of any known facts bearing on a determination whether benefits shall be granted.

AUTHORITY NOTE: Promulgated in accordance with Act 97 of 1936 as amended.

HISTORICAL NOTE: Promulgated by the Workforce Commission, Office of Unemployment Insurance, LR 39:

§353. Disclosure of Information Pursuant to R.S. 23:905

A. R.S. 23:905 governs the agency's sharing Louisiana workers' employer and wage information (hereinafter "shared information") with third-party vendors that facilitate the obtaining of such information by third parties under circumstances where such sharing is permitted by 20 C.F.R. Part 603 and not otherwise prohibited by law. A "third-party vendor" is a person or entity that facilitates the obtaining of shared information as an authorized agent of another person or entity to whom the release of the shared information is permitted by law and by 20 C.F.R. Part 603. However, this rule shall not apply to or restrict the sharing of such information, to the extent permitted by law and 20 C.F.R. Part 603, directly to the individual or the individual's attorney.

B. All sharing of data pursuant to R.S. 23:905 shall comply with 20 C.F.R. Part 603 and any other federal requirements or formal guidance governing such data sharing, including but not by way of limitation the requirement that the terms and conditions of such data sharing arrangements be prescribed in a data-sharing agreement. The agency shall require third party vendors to sign agreements with the agency establishing specific terms and conditions determined by the agency, in its sole discretion, to be necessary and appropriate to the particular data sharing arrangement with the third-party vendor.

C. Before providing any shared information to a third-party vendor, the agency shall require from the third-party vendor and/or the person or entity on whose behalf the third-party vendor requests shared information (the "client") documentation sufficient to verify the third-party vendor's representation of the client. The agency's costs in establishing any such data sharing arrangement shall be paid to the agency as a condition precedent to the implementation of any information sharing arrangement under R.S. 23:905.

D. A release consenting to the disclosure that meets the requirements of 20 C.F.R. Part 603 and signed by each person whose information is requested shall be provided to the agency before any data about that person is shared pursuant to this rule, and the agency's cost in providing said information shall be paid to the agency before the requested information is provided to the third-party vendor. The agency may accept a release that is effectuated electronically to the extent permitted by United States Department of Labor Unemployment Insurance Program Letter No. 19-12,

or any other subsequent official guidance or requirements promulgated by the United States Department of Labor.

E. Third-party vendors shall reimburse the agency for all costs the agency incurs in defending or resisting subpoenas or other legal demands made upon the third-party vendor or their customers seeking the release of information shared pursuant to R.S. 23:905.

F. The purposes for which shared information may be provided to third-party vendors are limited to lending purposes, tenant screening and insurance underwriting, and such sharing is permitted only if the purpose specified in the release provides a service or benefit the individual expects to receive as a result of signing the release. The use of shared information for marketing or any other purposes is prohibited.

G. As required by 20 CFR Part 603, the agency must conduct, and third-party vendors and their clients must permit, random on-site visits by agency auditors of their compliance with the requirements governing their access to, re-disclosure of, and retention and disposal of shared information.

AUTHORITY NOTE: Promulgated in accordance with Act 97 of 1936 as amended.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:494 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:46 (January 1991), amended by the Workforce Commission, Office of Unemployment Insurance, LR 39:

Chapter 3. Employment and Security Law

§357. Terms and Conditions Not Applicable to Claims for Payment of Extended Compensation

A. Section 1600(4) of the Louisiana Employment Security Law, pertaining to a waiting period of one week, is not applicable to claims for extended compensation.

B. All disqualifications for regular benefits apply to extended benefits in the same manner and to the same extent as to regular claims.

C. The forwarding of an extended compensation claim notice to a former employer of an individual does not serve to reopen a previously resolved issue or open to adjudication any issue concerning which an employer failed to furnish information within the time provided by §323 and §324.

AUTHORITY NOTE: Promulgated in accordance with Act 97 of 1936 as amended.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:495 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:46 (January 1991), amended by the Workforce Commission, Office of Unemployment Insurance, LR 39:

§368. Disqualification for benefits pursuant to R.S. 23:1601(8)(a)

A. The agency will notify the claimant by mail or other delivery method if the administrator has received information that the claimant has earned unreported wages for the weeks claimed.

1. The claimant shall have seven days from the date of the mailing to respond.

a. The claimant must provide adequate supporting documentation to establish that the unreported wages are incorrect.

b. Adequate documentation may include but is not limited to:

- i. proof of incorrect identity;
- ii. proof of incorrect date of wages;
- iii. check stubs;
- iv. time sheets;
- v. notice of separation or termination.

2. If the claimant requests notice to be sent by electronic delivery or delivery in another method beside mail, then the claimant shall have seven days from the delivery date of such notice to respond.

3. Acceptable Forms of electronic delivery may include but are not limited to:

- a. facsimile;
- b. e-mail.

AUTHORITY NOTE: Promulgated in accordance with Act 97 of 1936 as amended.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:1086 (December 1989), repromulgated LR 17:48 (January 1991), amended by the Workforce Commission, Office of Unemployment Insurance, LR 39:

§369. Waiver of Overpayment Recovery

A. Requirements for Waiver of Recovery of Overpayments

1. A waiver of the overpayment may be granted only if:

- a. the claimant was without fault in causing the overpayment;
- b. repayment would be against equity and good conscience; and
- c. the claimant provided supporting documentation of his inability to pay in full or according to the repayment table in Rule 371.

2. When a claimant appeals an overpayment determination, a written questionnaire shall be provided to claimant for an answer. The claimant shall return the completed questionnaire to the Appeals Tribunal prior to the hearing. If the claimant fails to return the completed questionnaire timely, then the waiver shall be denied.

3. In any proceedings, under this rule, the overpaid claimant shall have the burden of proving entitlement to a waiver.

B. Determination of Fault

1. To determine if fault existed on the part of the claimant, the factors considered shall include:

- a. gave inaccurate information;
- b. failed to disclose a material fact;
- c. knew or should have known that he/she is not entitled to the benefits;
- d. caused the overpayment by an act of omission of information known to the claimant; or
- e. had a determination of ineligibility due to fraud.

2. An affirmative finding on any one of the above precludes waiver of the overpayment.

C. Equity and Good Conscience Determination. In determining whether recovery of the overpayment would be against equity and good conscience, the factors considered shall include:

1. financial and other information provided in response to the agency's request, which shall include information about:

a. all financial resources available to the claimant and members of the claimant's household;

b. the claimant's living expenses, including, but not by way of limitation, expenses for food, clothing, rent, debt payment obligations, accident and health insurance, medical care, taxes, work related transportation, and the support of others for whom the claimant is legally responsible; and

c. any other factors that impact the claimant's ability to cover ordinary living expenses for six months;

2. whether the claimant was given notice that a reversal on appeal would result in an overpayment.

D. All notices of determination of overpayment shall include information regarding rights of appeal and waiver provisions.

AUTHORITY NOTE: Promulgated in accordance with Act 97 of 1936 as amended.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:1086 (December 1989), repromulgated LR 17:48 (January 1991), amended by the Workforce Commission, Office of Unemployment Insurance, LR 39:

§371. Overpayment Recovery; Civil Penalties

A. This rule prescribes an acceptable repayment schedule for the purpose of collecting overpaid benefits pursuant to R.S.23:1714.

Repayment Tables Total for Overpayments			
Total Overpayment Amount is: At Least	But Less Than:	Number of Months to Repay	Recommended Monthly Payment
\$1	\$500	12	\$41
\$501	\$1,000	12	\$83
\$1,001	\$1,500	18	\$83
\$1,501	\$2,000	18	\$111
\$2,001	\$2,500	24	\$104
\$2,501	\$3,000	24	\$125
\$3,001	\$3,500	30	\$116
\$3,501	\$4,000	30	\$133
\$4,001	\$4,500	36	\$125
\$4,501	\$5,000	36	\$138
\$5,001	\$5,500	42	\$130
\$5,501	\$6,000	42	\$142
\$6,001	\$6,500	48	\$135
\$6,501	\$7,000	48	\$145
\$7,001	\$7,500	54	\$138
\$7,501	\$8,000	54	\$148
\$8,001	\$8,500	60	\$141
\$8,501	\$9000 or greater	60	\$150

1. Initial Payment must be received within 45 days of the date upon which the repayment agreement is signed. Subsequent payments are due to be paid in monthly increments which must be received no later than 30 days thereafter.

2. An adjustment of the repayment schedule may be granted at the written request of the claimant only if there has been material change in his or her financial condition.

B. Requests to adjust the repayment schedule will only be granted if warranted by the criteria set forth in §369.C, Waiver of Overpayment Recovery, Equity and Good Conscience Determination.

AUTHORITY NOTE: Promulgated in accordance with Act 97 of 1936 as amended.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:1085 (December 1989), repromulgated LR 17:48 (January 1991), amended by the Workforce Commission, Office of Unemployment Insurance, LR 39:

In accordance with the provisions of the Administrative Procedure Act, specifically at R.S. 49:968(H)(2), LWC gives notice of a public hearing to receive additional comments and testimony on these substantive amendments to the proposed Rule. The hearing will be held at 10 a.m. on May 30, 2013, at 10:00 A.M. at the LWC Training Center, 2155 Fuqua Street, Baton Rouge, LA 70802. At that time, all

interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. Interested persons may submit written comments to Latisha Nixon-Jones, Executive Management Officer. The deadline for receipt of all written comments is May 10, 2013.

Curt Eysink
Executive Director

1304#102

CUMULATIVE INDEX
(Volume 39, Number 4)

2013	
Pages	Issue
1-230.....	January
231-441.....	February
442-932.....	March
933-1227.....	April

EO—Executive Order
PPM—Policy and Procedure Memoranda
ER—Emergency Rule
R—Rule
N—Notice of Intent
CR—Committee Report
GR—Governor's Report
L—Legislation
P—Potpourri
QU—Administrative Code Quarterly Update

Temporary Assistance to Needy Families (TANF) caseload reduction report, 223P
 Use of TANF benefits, 444ER, 1066N
 Verbal fair hearing withdrawals, 162N

Licensing Section

Crib standards, 470R
 Criminal records check, 166N
 Emergency preparedness and evacuation planning, 4ER
 Juvenile detention facilities fees, fines, penalties, and state central registry disclosure, 127N, 1006R
 Penalty for the operation of an unlicensed facility, 66R

Secretary, Office of

Community and family support system flexible family fund, 5ER
 Louisiana's annual progress and services report, 920P
 Social services block grant intended use report, 920P

ADMINISTRATIVE CODE QUARTERLY UPDATE

Cumulative

January 2012-December 2012, 219QU
 January 2013-March 2013, 1209QU

AGRICULTURE AND FORESTRY

Agricultural and Environmental Sciences, Office of Seed Commission

Annual quarantine listing plant protection and quarantine, 1211N
 Labeling and testing, 351N

Structural Pest Control Commission

Minimum specifications for bait and baiting requirements, 232ER
 Minimum specifications for trench and treat termite control work, 232ER
 Structural pest control, 300R
 Termite control—trench and treat, 358N
 Wood destroying insect report and requests for rule changes or declaratory rulings, 233ER

DEPARTMENT OF CIVIL SERVICE

Ethics, Board of

Investigation and hearing procedures, 521N

CHILDREN AND FAMILY SERVICES

Formerly Department of Social Services.

Division of Programs

Economic Stability and Self-Sufficiency

Child support enforcement
 Administrative suspension of licenses, 1063N
 Income assignment, 1064N
 Child welfare emergency assistance services program, 67R, 934ER
 Drug screening, energy assistance and substance abuse treatment programs, 235ER, 525N
 Increasing resource limit for households with elderly and disabled members, 4ER

CULTURE, RECREATION AND TOURISM

State Library, Office of

Cultural resources, 67R

State Parks, Office of

State parks, 359N

ECONOMIC DEVELOPMENT

Business Development Services, Office of

Competitive projects tax exemption program, 131N, 1078N

Entertainment Industry Development, Office of

Entertainment industry tax credit programs
 Digital media and software act, 133N, 1009R
 Musical and theatrical production income tax credit program, 140N

EDUCATION

Elementary and Secondary Education, Board of

Technical revisions and updates, 307R
 Bulletin 111—The Louisiana School, District and State Accountability System, 534N
 Alternative education, schools, programs, 472R
 School Performance Score Component, 304R
 Bulletin 118—Statewide Assessment Standards and Practices, 73R, 144N, 537N, 1018R
 Bulletin 119—Louisiana School Transportation Specifications and Procedures, 80R
 Bulletin 124—Supplemental Educational Services, 1068N

EDUCATION (Continued)

- Bulletin 126—Charter Schools, 473R, 546N, 1021R
Application process, 81R
Recruitment and enrollment, 148N
- Bulletin 129—The Recovery School District, 1022R
Return of schools to LEA, 82R, 150N
- Bulletin 130—Regulations for the Evaluation and Assessment of School Personnel, 368N
- Bulletin 133—Scholarship Programs, 82R
- Bulletin 134—Tuition Donation Rebate Program, 152N, 1023R
- Bulletin 135—Health and Safety, 158N, 1029R, 1071N
- Bulletin 741—Louisiana Handbook for School Administrators, 554N, 576N
Bullying, 476R
High schools, 168N, 1038R
- Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators—Programs of Study, 306R
Diabetes management and treatment, 480R
- Bulletin 746—Louisiana Standards for State Certification of School Personnel, 616N
- Regents, Board of**
Registration and licensure, 84R
- Student Financial Assistance Commission**
Student Financial Assistance, Office of
Scholarship/grant programs, LSMSA equivalent courses, 481R
Louisiana GO grant, 934ER, 1073N
TOPS GPA calculation, 308R
- Tuition Trust Authority**
Student Financial Assistance, Office of
START savings program, 2012 interest rate, 938ER, 1077N

ENVIRONMENTAL QUALITY

- Secretary, Office of**
Legal Affairs Division
2008 Ozone (O3) national ambient air quality standards (NAAQS)—state implementation plan (SIP) revisions, 223P
2010 Sulfur dioxide (SO2) national ambient air quality standards (NAAQS)—state implementation plan (sip) revisions, 433P
2012 Annual incorporation by reference of certain federal air quality regulations, 372N
Asbestos-containing materials in schools and state buildings, 1080N
Control facilities to be installed when feasible, 169N
Emission standard for asbestos (demo/reno), 1099N
Incorporation by reference of 40 CFR 60, 171N, 1038R
Lead notification, 623N
Office of environmental assessment references, 85R
Regulated new source review (NSR) pollutant, 375N
Regulatory permit for flaring of materials other than natural gas, 1039R

EXECUTIVE ORDERS

- BJ 12-24 Executive Branch—Expenditure Reduction, 1EO
- BJ 12-25 Executive Branch—Spending Freeze, 2EO
- BJ 13-01 School and Campus Safety, 3EO
- BJ 13-02 Carry-Forward Bond Allocation 2012, 231EO
- BJ 13-03 Offender Labor, 442EO
- BJ 13-04 Carry-Forward Bond Allocation—Louisiana Community Development Authority, 442EO
- BJ 13-05 Establishment of the Louisiana Interagency Council on Homelessness through the Housing and Transportation Planning and Coordinating Commission, 933EO

GOVERNOR

- Administration, Division of**
Facility Planning and Control
Capital improvement projects—building code, 85R
- Pardons, Board of**
Administration and clemency, 528N
General administration and clemency, 7ER
- Racing Commisison**
Disputed races, 175N
Nonsteroidal and/or anti-inflammatory medication, 176N
- State Purchasing, Office of**
Master agreements; clauses; approval, 309R
Pre-printed contract forms; clauses; approval, 433P
Procurement of consulting services as related services, 309R
- Tax Commission**
Ad valorem taxation, 487R
Public hearing, 224P
- Architectural Examiners, Board of**
Architect's seal or stamp, 483R
Rules of conduct, 483R
- Capital Area Ground Water Conservation Commission**
Pumpage fees, 486R
- Cemetery Board**
Cemetery industry, 1107N
- Coastal Protection and Restoration Authority**
Public hearing—state fiscal year 2014 draft annual plan, 223P
- Certified Shorthand Reporters, Board of Examiners**
Continuing education, 172N, 1040R
- Commission on Law Enforcement and Administration of Criminal Justice**
Innocence compensation fund, 173N, 1041R
- Crime Victims Reparations Board**
Limits on awards, 174N, 1042R
- Motor Vehicle Commission**
Automotive industry, recreational products, 498R
- Real Estate Appraiser's Board**
Real Estate
Appraisal management companies, 376N
Peer review committees and valuation services, 310R

HEALTH AND HOSPITALS

Aging and Adult Services, Office of

- Home and community-based services waivers
 - Adult Day Health Care
 - Reimbursement rate reduction, 250ER, 507R
 - Community choices waiver, 32ER, 319R, 1157N
 - Reimbursement methodology, 250ER, 508R, 1048R
 - Reimbursement rate reduction, 36ER, 508R
 - Cost reporting requirements, 509R
 - New opportunities waiver
 - Reimbursement rate reduction, 1049R
 - Support coordination standards for participation, 448ER, 629N
 - Supports Waiver
 - Reimbursement rate reduction, 1050R
- Nursing facilities
 - Standards for payment level of care determinations, 640N
- Personal care services
 - Long-term
 - Cost reporting requirements, 271ER
 - Policy clarifications and service limit reduction, 46ER, 1161N
 - Reimbursement rate reduction, 271ER, 387N

Behavioral Health, Office of

- Behavioral health services
 - Physician payment methodology, 939ER
 - Statewide management organization,
 - Adults capitated payment reduction, 317R
 - LaCHIP affordable plan benefits administration, 940ER
- Children's behavioral health services
 - Reimbursement rate reduction, 317R
- Substance abuse services, reimbursement rate reduction, 281ER
- Supplemental payments, 237ER

Citizens with Developmental Disabilities, Office of

- Home and community-based services waivers
 - Children's choice
 - Allocation of waiver opportunities, 970ER
 - Money follows the person rebalancing demonstration extension, 32ER
 - Service cap reduction, 507R
 - New opportunities waiver
 - Reimbursement rate reduction, 192N
 - Residential options waiver, 971ER
 - Reimbursement rate reduction, 193N, 251ER
 - Supports waiver
 - Reimbursement rate reduction, 194N, 252ER

Dentistry, Board of

- Continuing education, licensure examinations and criminal history records, 86R
- General provisions—evidence of graduation, restricted licensees, temporary licenses, and returning to active practice, 86R
- Licensure by credentials, 87R
- Restrictive license; fees, sedation, educational requirements, facilities and exceptions, 89R
- Reuse of toothbrush; continuing education requirements; examination of dentists, 378N

Health Services Financing, Bureau of

- Abortion facilities—licensing standards, 18ER, 190N
- Adult dentures program, reimbursement rate reduction, 316R
- All inclusive care for the elderly
 - Reimbursement rate reduction, 316R
- Ambulatory surgical centers, reimbursement rate reduction, 316R
- Behavioral health services
 - Physician payment methodology, 939ER
 - Statewide management organization
 - Adults capitated payment reduction, 317R
 - LaCHIP affordable plan benefits administration, 940ER
 - Supplemental payments, 237ER
- Children's behavioral health services. reimbursement rate reduction, 317R
- Coordinated care network, 445ER
 - Dental benefits plan, 19ER, 238ER
 - LACHIP affordable plan benefits administration, 941ER
 - Pharmacy services coverage, 92R, 318R
 - Physician services, reimbursement methodology, 25ER, 941ER
 - Repeal of dental benefits plan, 942ER
- Crisis receiving centers, licensing standards, 943ER
- Disproportionate share hospital payments, 27ER
 - Community hospitals, 29ER
 - Distinct part psychiatric units, payment methodology, 505R
 - Low income and needy care collaboration, 966ER
 - Public-private partnerships, 244ER
 - Small rural hospitals, qualifying criteria, 968ER
- Early and periodic screening, diagnosis and treatment, 318R
 - Dental program, 29ER
 - Dental program, reimbursement rate reduction, 1048R
 - Repeal of dental services removal, 969ER
 - School-based health centers, 30ER, 505R
 - School-based nursing services, 245ER
 - Uncompensated care payments, 93R
- Electronic health records incentive payments, inclusion of optometrists, 31ER, 505R
- End stage renal disease facilities, reimbursement rate reduction, 248ER
- Facility need review
 - Exception criteria for bed approvals, 628N
- Family planning clinics
 - Reimbursement methodology office of public health uncompensated care payments, 93R
 - Reimbursement rate reduction, 248ER, 506R
- Family planning waiver, reimbursement rate reduction, 249ER, 506R
- Federally-qualified health centers fluoride varnish applications, 969ER
- Home and community-based services waivers
 - Adult Day Health Care
 - Reimbursement rate reduction, 250ER, 507R
 - Children's choice
 - Allocation of waiver opportunities, 970ER
 - Money follows the person rebalancing demonstration extension, 32ER

HEALTH AND HOSPITALS (Continued)

- Service cap reduction, 507R
- Community choices waiver, 32ER, 319R, 1157N
 - Reimbursement methodology, 250ER, 508R, 1048R
 - Reimbursement rate reduction, 36ER, 508R
- Cost reporting requirements, 253ER, 509R
- New opportunities waiver
 - Reimbursement rate reduction, 192N, 447ER, 1049R
- Residential options waiver, 971ER
 - Reimbursement rate reduction, 193N, 251ER
- Support coordination standards for participation, 448ER, 629N
- Supports waiver
 - Reimbursement rate reduction, 194N, 252ER, 1050R
- Home health program
 - Cost reporting requirements, 255ER, 509R
 - Durable medical equipment
 - Reimbursement rate reduction, 196N, 254ER, 1050R
 - Nursing and home health aide services
 - Reimbursement rate reduction, 197N, 254ER, 1050R
- Hospice services, 37ER, 255ER
 - Repeal of new enrollments termination, 259ER
- Inpatient hospital services
 - Distinct part psychiatric units reimbursement methodology, 94R
 - Free-standing psychiatric hospitals
 - Low income and needy care collaboration, 323R
 - Major teaching hospitals
 - Qualifying criteria, 323R
 - Supplemental payments, 259ER
 - Neonatal and pediatric intensive care units and outlier payment methodologies, 457ER
 - Non-rural, non-state hospitals
 - Low income and needy care collaboration, 986ER
 - Reimbursement rate reduction, 38ER, 459ER
 - Non-rural, non-state public hospitals
 - Reimbursement methodology, 39ER, 95R, 639N
 - Public-private partnerships
 - Reimbursement methodology, 39ER, 987ER, 988ER, 988ER
 - Supplemental payments, 260ER
 - Small rural hospitals
 - Low income and needy care collaboration, 40ER
 - State hospitals
 - Reimbursement rate reduction, 460ER
- Intermediate care facilities for persons with developmental disabilities
 - Non-state facilities reimbursement methodology, 461ER, 1160N
 - Public facilities, reimbursement methodology, 325R
 - Reimbursement rate reduction, 261ER
- Laboratory and radiology services
 - Office of public health uncompensated care payments, 95R
 - Reimbursement rate reduction, 262ER, 380N
- LaCHIP affordable plan
 - Dental program, reimbursement rate reduction, 263ER, 381N
 - Medicaid eligibility, medically needy program behavioral health services, 989ER
 - Medicaid provider screening and enrollment, 198N, 1051R
 - Medical transportation program
 - Emergency ambulance services
 - Reimbursement rate reduction, 264ER, 383N, 461ER
 - Supplemental payments, 264ER, 921P, 991ER
 - Nursing facilities
 - Per diem rate reduction, 384N
 - Reimbursement methodology
 - Low income and needy care collaboration, 267ER
 - Private room conversions, 268ER
 - Standards for payment level of care determinations, 642N
 - Reimbursement rate reduction, 993ER, 994ER
 - Reimbursement rate reduction after state fiscal year 2013, 269ER
 - Reimbursement rate reduction before state fiscal year 2013, 269ER
 - Outpatient hospital services
 - Diabetes self-management training, 41ER
 - Non-rural, non-state hospitals and children's specialty hospitals, 327R
 - Reimbursement rate reduction, 42ER, 462ER
 - Non-rural, non-state public hospitals
 - Supplemental payments, 44ER
 - Public-private partnerships
 - Reimbursement methodology, 995ER
 - Supplemental payments, 464ER
 - Small rural hospitals
 - Low income and needy care collaboration, 465ER
 - Pediatric day health care program
 - Reimbursement rate reduction, 270ER, 385N
 - Personal care services
 - Long-term
 - Cost reporting requirements, 200N, 271ER, 1052R
 - Policy clarifications and service limit reduction, 46ER, 1161N
 - Reimbursement rate reduction, 271ER, 387N
 - Pharmacy benefits management program
 - Medication administration, influenza vaccinations, 996ER
 - Methods of payment, 272ER
 - Pregnant women extended services
 - Dental services, program termination, 50ER
 - Substance abuse screening and intervention services, 51ER
 - Professional services program
 - Anesthesia services
 - Reimbursement rate reduction, 275ER, 1167N
 - Children's immunizations
 - Reimbursement methodology, 52ER
 - Diabetes self-management training, 53ER
 - Family planning services
 - Office of public health uncompensated care payments, 96R
 - Reimbursement rate reduction, 276ER, 1168N
 - Fluoride varnish applications, 996ER
 - Immunizations office of public health uncompensated care payments, 96R
 - Immunizations reimbursement methodology, 277ER

HEALTH AND HOSPITALS (Continued)

Physician services

Reclassification of optometry services, 54ER

Reimbursement methodology, 56ER, 278ER

Reimbursement rate reduction, 57ER

Rehabilitation clinics, termination of coverage for recipients 21 and older, 58ER

Reimbursement methodology, Supplemental payments, 279ER

Prosthetics and orthotics, reimbursement rate reduction, 281ER

Psychiatric residential treatment facilities, licensing standards, 468ER

Rural health clinics, fluoride varnish applications, 997ER

State Children's health insurance program, LaCHIP affordable plan benefits administration, 998ER

Substance abuse services, reimbursement rate reduction, 281ER

Targeted case management

HIV coverage termination, 59ER

Nurse family partnership program

Termination, 60ER

Uncompensated care payments, 97R

Reimbursement rate reduction, 282ER

Third party liability

Provider billing and trauma recovery, 509R

Licensed Professional Counselors, Board of Examiners

LPC practice and code of conduct, 1121N

Practice of mental health counseling for serious mental illnesses, 283ER

Massage Therapy, Board of

Massage therapists, 644N

Medical Examiners, Board of

Physician practice; dispensation of medications, 185N, 1047R

Nursing, Board of

Advance practice registered nurses, 1147N

Nursing Facility Administrators, Board of Examiners

Exam requirements and complaints, 182N, 1044R

Peripherally inserted central catheter (PICC) insertion and removal, 501R

Pharmacy, Board of

Compounding for prescriber's use, 14ER, 186N, 236ER

Controlled dangerous substance license for non-resident distributors, 312R

Controlled dangerous substances in emergency drug kits, 312R

Durable medical equipment (DME) permit, 15ER, 501R

Hospital off-site satellite pharmacy, 188N

Institutional pharmacies, 313R

Interstate remote processing, 313R

Prescription monitoring program, 314R

Public hearing—substantive changes to proposed rule compounding for prescriber's use, 1213N

Security of prescription department, 315R

Technician training programs, 1155N

Psychologists, Board of Examiners

Fees, 311R

Public Health, Office of

Added controlled dangerous substance, 284ER

Disease reporting requirements and blood bank storage temperature, 201N, 1052R

Early and periodic screening, diagnosis and treatment uncompensated care payments, 93R

Family planning clinics

Reimbursement methodology office of public health uncompensated care payments, 93R

Laboratory Services

Office of public health uncompensated care payments, 95R

Permit Requirements and additional requirements for a potable water supply, and inapplicability of certain requirements of ten state standards, 205N

Professional services program

Family planning services office of public health uncompensated care payments, 96R

Immunizations office of public health uncompensated care payments, 96R

Targeted case management—nurse family partnership program, uncompensated care payments, 97R

Review and approval of plans and specifications for issuance of a permit for a potable water supply, 61ER, 999ER

Sanitary code

Plumbing, 511R

Secretary, Office of

Community and family support system flexible family fund, 5ER

Stop order—added controlled dangerous substances, 434P

Speech-Language Pathology and Audiology, Board of Examiners

General requirements, 179N, 1042R

Wholesale Drug Distributors, Board of

Policy and procedures and quarantine of legend drugs or legend devices, 91R

INSURANCE

Commissioner, Office of the

Credit for reinsurance, 655N

LEGISLATION

Committee Reports

Report of the Senate Health and Welfare Committee emergency rule oversight hearing on rule changes proposed by the Board of Pharmacy, 432CR

LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE, BOARD OF SUPERVISORS

Procurement Services and Property Management, Office of

University pilot procurement code, 1169N

NATURAL RESOURCES

Coastal Management, Office of

Mitigation bank review procedures, 673N
Public hearings and notices, 327R

Conservation, Office of

Application requirements to drill, 515R
Class III (solution-mining) injection wells, 435P
Electric well logs, 435P
Orphaned oilfield sites, 224P, 436P, 1214N
Public hearing—substantive changes to proposed rule;
hydraulic fracture stimulation operations, 1214N
Statewide orders No. 29-B and 29-B-a, 284ER
Statewide order No. 29-B—hydraulic fracture
stimulation operations, 388N

Oil Spill Coordinator's Office

Deepwater horizon oil spill phase II early restoration
plan and environmental review, 225P

Secretary, Office of

Fishermen's Gear Compensation Fund

Underwater Obstruction Latitude/Longitude
Coordinates, 225P, 436P, 922P, 1215N

PUBLIC SAFETY AND CORRECTIONS

Gaming Control Board

Truck stop travel lanes, 329R

Motor Vehicles, Office of

Driver education, 98R
Veterans driver's license, 516R

State Fire Marshal, Office of the

Code enforcement and building safety fire protection,
678N

State Police, Office of

Special permit for vehicles hauling sugarcane, 98R

State Uniform Construction Code Council

State uniform construction code, 62ER, 207N, 1000ER,
1182N

REVENUE

Policy Services Division

Corporation income and franchise tax filing extensions,
99R
Income tax credits for wind or solar energy systems,
99R
Income—withholding tax—payment, 103R
Individual income tax filing extensions, 102R
Withholding by professional athletic teams, 103R, 329R

Alcohol and Tobacco Control, Office of

Responsible vendor program, 1184N

STATE

Elections Division

Emergency election day paper ballot procedures, 1055R
Voter registration at mandatory voter, registration
agencies, 1002ER

TRANSPORTATION

Aviation Section

Aviation program needs and project priority process,
104R

Engineering, Office of

Access connection permits, 1190N
Automatic license plate camera devices, 1193N

Highways/Engineering, Office of

Design-build pilot program repeal, 117R

Management and Finance, Office of

Geospatial database, 1058R

Multimodal Planning, Office of

Port design-build pilot program, 117R

Operations, Office of

Special permit for vehicles hauling sugarcane, 98R

Professional Engineering and Land Surveying Board

Compiled as-built record drawings and continuing
professional development credit for thesis directors,
681N
Naval architecture/marine engineering and flood
protection levees, 209N, 1060R

TREASURY

Louisiana State Employees' Retirement System, Board of

Election to the board of trustees, 118R
Plan year; limitations year, 120R

Louisiana State Police Retirement System, Board of Trustees

Internal revenue code provisions, 210N

Municipal Police Employees' Retirement System, Board of Trustees

Internal revenue code provisions, 389N

Registrars of Voters Employees' Retirement System, Board of Trustees of

Internal revenue code provisions, 1195N

WILDLIFE AND FISHERIES

Wildlife and Fisheries Commission

Alligator regulations, 1203N
Alternative oyster culture permits, 516R
Black bass regulations—atchafalaya river basin; lake
verret, lake palourde complex; lake fausse point/lake
dauterive complex, 683N
Commercial king mackerel harvest, commercial king
mackerel season 2013-14, 63ER
Commercial shark season 2013, 63ER
Crappie regulations—daily take, 684N
Deer management assistance program, 685N
Exotic fish
Designation and taking, 120R
Falconry, 120R
Fall inshore shrimp season closure, 296ER
General and wildlife management area hunting rules
and regulations, 397N
Oyster season opening in a portion of the public oyster
seed grounds east of the Mississippi River, 1005ER

WILDLIFE AND FISHERIES (Continued)

Recreational and commercial fisheries closure
February 7, 2013, 296ER
January 17, 2013, 297ER
Reef fish
Harvest regulations regulations, 330R
Greater amberjack commercial trip limit 2013,
64ER
Recreational reef fish seasons 2013-2014, 65ER
Remote setting program, 289ER
Resident game hunting season, 413N
Restricted amphibians and reptiles, 419N
Shrimp season closure
Fall inshore
December 18, 2012, 64ER
December 20, 2012, 64ER
Wild seafood certification program, 1062R

WORKFORCE COMMISSION

Unemployment Insurance, Office of
Appealed claims for board of review, 420N
Benefits for unemployment insurance, 422N
Hearing rules, 922P
Public hearing, 922P
Public hearing—substantive changes to proposed rule
appealed claims for board of review, 1215N
Unemployment insurance, 426N
Workers' Compensation, Office of
Electronic medical billing and payment companion
guide, 331R
Public hearing—substantive changes to proposed rule;
benefits for unemployment insurance, 1217N
Workers' compensation medical reimbursement
schedule, 686N, 1204N